1009.

SUPREME COURT OF THE UNITED STATES.

No. 163.

DANIEL GROVE, APPELLANT,

vs.

JOHN McP. BRIEN AND ROBERT GILMOR.

ON APPEAL FROM THE CIRCUIT COURT U. S., FOR ALEXANDRIA, D. C.

INDEX.

	Original.	Print.
Title	1	3
Bill	2	3
Subpœna and attachment	5	5
Common order of publication	6	5
Bill taken for confessed, &c.	6	6
Answer of Fowle & Sons to the original bill	7	6
Letter from McP. Brien to Fowle & Sons	10	7
Order for the sale of the nails in Fowle & Sons' hands	10	8
Leave to file cross bill, and demurrer to cross bill	11	8
Leave to make R. Gilmor a defendant	13	9
Leave to R. Gilmor to file a cross bill	13	9
Amended bill	13	9
Answer of Robert Gilmor	14	9
Cross bill	16	11
Answer of John McP. Brien	21	13
Answer of Daniel L. Grove to cross bill	23	14
Answer of William Fowle & Sons to cross bill	26	16
The causes set for hearing, &c.	29	18
Final decree	29	18
Letter of March 14, 1843, McP. Brien to Fowle & Sons	32	19
Complainant Grove's depositions.		
Deposition of William Eichelberger	37	22
Deposition of H. S. Sanderson	38	22
Deposition of Charles S. Lewis	39	23
Deposition of John A. Grimes	55	31
Deposition of Jeremiah Kuhn	63	34
Deposition of Little & Conley	71	38

J.& G. S. Gideon, printers.

	Original.	Print.
Account referred to in complainant Grove's bill, and in the deposition of John Little	76	41
Deposition of Josiah Davis	85	45
Deposition of Henry B. Clagett	87	47
Defendant Robert Gilmor's depositions.		
Deposition of John McP. Brien	88	47
Carrier's receipt, marked A, referred to in McP. Brien's deposition	92	49
The draft referred to in Gilmor's cross bill	96	51
Deposition of Charles Ing	97	52
Deposition of John Glenn	105	56
Deposition of Robert J. Brent	107	56
Account of the sale of the nails by W. Fowle & Sons	110	57
Appeal bond	112	58
Certificate and seal by clerk	114	59

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States circuit court of the District of Columbia, for the county of Alexandria, at the court house in the town of Alexandria, the 31st day of October, 1846.

Title.

DANIEL L. GROVE, complainant,
against
JOHN McP. BRIEN, Robert Gilmor, and William Fowle, William H. Fowle, and George D. Fowle, trading under the firm of William Fowle & Sons, defendants. } In chancery.

And ROBERT GILMORE, complainant,
against
DANIEL L. GROVE, John McP. Brien, William Fowle, William H. Fowle, and George D. Fowle, trading under the firm of William Fowle & Sons, defendants. } Cross suit.

Bill.

Be it remembered, that heretofore, to wit, on the 23d day of January, 1843, came the complainant, Daniel L. Grove, by Charles H. Lee, esq., his solicitor, and filed in the clerk's office of the said court the following bill against the said defendants:

To the honorable the judges of the United States circuit court of the District of Columbia, sitting in chancery, at Alexandria, humbly complaining.

Your orator, Daniel L. Grove, sheweth unto your honors, that John McP. Brien is indebted to him in or about the sum of one thousand and eighty-nine dollars and eighty cents, a portion thereof due by account, the residue by six drafts, drawn by the said Brien in favor of your orator, and the costs of protest on three of the same, with interest on three hundred and eighty-four dollars and fifty-five cents, part thereof from the 1st day of January, 1843, and the like interest on the following sums: On one hundred dollars from the second day of April, 1842; also one hundred dollars from the 17th day of April, 1842; also on one hundred and fifty dollars, from the 3d day of May, 1842; also on one hundred dollars, from the 9th day of May, 1842; also on one hundred dollars, from the 14th day of May, 1842; and also on one hundred and fifty dollars, from the 17th day of May, 1842. The principal of which said several sums, together with five dollars and twenty-five cents costs of protest above mentioned, make the sum above

alleged to be due your orator. He files herewith, as exhibits, the account marked No. 1, and the drafts and protests marked 2, 3, 4, 5, 6, and 7, and prays that they may be taken as part of this his bill of complaint. He would further state, that he has frequently applied to the said Brien for payment, but as yet has failed to obtain the same, or any part thereof.

That the said John McP. Brien is not a resident of the District of Columbia, and is beyond the reach of any process issuable from the common law side of this honorable court. That he has understood that the defendant, Brien, has funds and effects sufficient to pay the claim of your orator in the hands of William Fowle and William H. Fowle, recently trading under the name of William Fowle & Son; and in the hands of William, William H., and George D. Fowle, trading under the firm of William Fowle & Sons; all whom, together with the said John McP. Brien, your orator prays may be made defendants hereto; all of which actings and doings of the said Brien are against equity and conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and in as much as your orator has no relief in the premises at law, and can only find remedy in a court of equity, where matters of this sort are properly cognizable, to the end, therefore, that the said defendants may full, true, and perfect answer, on oath make, to the several matters herein alleged, but more particularly that the said John McP. Brien may answer and say, whether he is not indebted to your orator in the manner and in the amount charged? Whether any part of the same has been paid; if so, how much, and when? That the said William, William H., and George D. Fowle, may each of them answer and say, whether they have not in their hands, either as individuals, or as members of either of the firms herein before mentioned, money, bills, notes, goods or chattels of any description whatever, due or belonging to the said Brien; if so, how much; that they may be restrained from paying or delivering to the said Brien, or to any one on his behalf, whatever they may have belonging to him; but that the same may be attached, (or so much thereof as may be necessary to pay your orator's debt, and the costs of this suit,) in the hands of the resident defendants, and rendered liable for the payment of your orator's claim. And that such other and further decree may be made in the premises as may be consistent with equity, may it please your honors to grant your orator the United States most gracious writ of subpœna in chancery, to the defendants directed, commanding, &c.

DAN'L L. GROVE,
By CHARLES H. LEE,
His solicitor.

STATE OF VIRGINIA,
County of Jefferson, to wit:

Daniel L. Grove personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, and made oath, in due form of law, that the matters and things herein contained, where stated

to be of his own knowledge, are true, and where stated to be of the knowledge of others, he believes to be true.

Given under my hand and seal, this 23d day of January, 1843.

CHARLES HARPER.

The exhibits referred to in the foregoing bills, as account No. 1, and drafts and protests No. 2, 3, 4, 5, 6, and 7, will be found—the account on page 72; the drafts and protests from pages 40 to 49 inclusive.

Upon the filing of which bill a subpœna and attachment in chancery issued from the clerk's office of the said court, to the marshal of the District of Columbia directed, which is in the words and figures following:

Subpœna and attachment.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the District of Columbia, greeting:

You are hereby commanded to summon John McP. Brien, William Fowle, William H. Fowle, and George D. Fowle, trading under the firm of William Fowle & Sons, to appear before the honorable judges of the circuit court of the District of Columbia, for the county of Alexandria, at the court house of the said county, in the town of Alexandria, at the next court, to answer a bill in chancery exhibited against them by Daniel L. Grove, and this they shall in no wise omit, under the penalty of $333 33; and have then there this writ.

Witness the honorable William Cranch, chief judge of our said court, this 23d day of January, 1843.

CASSIUS F. LEE, *C. C.*

(Endorsed.)

The object of the complainant's bill is to attach in the hands of the resident defendants, William Fowle & Sons, the property, debts, money, and effects which they, or either of them, may have in their hands belonging to the absent defendant, John McP. Brien, as will pay the debt of $1,200, and costs of suit.

Test: CASSIUS F. LEE, *C. C.*

(Marshal's return.)

Executed on all the defendants except John McP. Brien, who is not found, and no inhabitant.

E. BURCHALL, *D. M.*

Common order of publication.

At a court continued and held for the district and county aforesaid, the day of May, 1846, came the complainant, Daniel L. Grove, by his said attorney, and the defendant, John McP. Brien, not having entered his appearance to this suit, and given security according to the statute and the rules of this court, and it appearing to the satisfaction of the court that the said John McP. Brien is not an inhabitant of the District of Columbia, on the motion of the complainant by his counsel,

it is ordered, that the said absent defendant do appear here on or before first day of the next October term of this court, and answer the complainant's bill, and give security for performing the decrees of the court; and that the resident defendants, William Fowle & Sons, do not convey, pay away, or secrete the debts by them owing to, or the estate, money, or effects in their hands, belonging to the said absent defendant, until the further order and decree of the court; and that a copy of this order be forthwith published for two months successively in the Alexandria Gazette, and another copy posted at the front door of the court house of said county.

Bill taken for confessed, &c.

And at another day, to wit, at the rules held in the clerk's office of the said court for the month of September, 1843, came the complainant by his solicitor, and the resident defendants, William Fowle & Sons, having been duly served with process, and not having entered their appearance to this suit, and answered the complainant's bill; on the complainant's motion it is ordered, that his bill be taken for confessed, and set for decree, as to the said resident defendants, William Fowle & Sons, and the cause is continued against the absentee.

And at a court continued and held for the district and county aforesaid, the day of November, 1843, came the defendants, William Fowle & Sons, by Henry W. Davis, esq., their solicitor, and on their motion the order taking the bill for confessed as to them is set aside; and they filed their answer to the complainant's bill, to which answer the complainant replies generally.

Which answer is in the words and figures following:

Answer of W. Fowle & Sons to original bill.

The separate answer of William Fowle, William H. Fowle, and George D. Fowle, trading under the firm of William Fowle & Sons, to the bill of complaint exhibited against them and John McP. Brien, by Daniel Grove, in the circuit court of the county of Alexandria.

These respondents, answering to so much of the said bill as they are advised is material for them to answer, say, that for some years past the said Brien has been accustomed to supply their firm with nails from his foundry, or "the Antieatam Works," in the State of Maryland; that prior to the 21st of February, 1843, in pursuance of their usual custom, they directed an order to the said John McP. Brien for a certain quantity of nails in the said order specified, and received in answer thereto a letter from the said Brien, dated at Antieatam, February 21, 1843, acknowledging the receipt of the aforesaid order of their firm, and engaging to forward them the nails "that they had ordered" so soon as an opportunity was afforded; a copy of which letter is herewith exhibited as part of this answer, marked A; that subsequently to the receipt of the said letter of the 21st of Feb'y, 1843, and about the middle of the month of March following, they received from the said Brien a consignment of *five hundred kegs of nails*, in fulfilment of his promise made

in the aforesaid letter of the 21st of February, 1843; and that on the 20th of March following, an attachment was levied on the said five hundred kegs of nails in the name of the complainant.

These respondents further shew to the court, that having been thus in the habit of receiving supplies of the aforesaid description from the said Brien, they had, at his request, made advances to him at various times on the faith of his promise to continue his consignments to them; and that in this way, and for the commissions and expenses due on prior consignments, the said Brien was, at the time of the last referred to consignment of five hundred kegs of nails, indebted to them in the amount of $, to which amount these respondents are advised they have a subsisting and valid lien on the said five hundred kegs of nails, or their proceeds in their hands; and that there claim is such a one as this court ought to respect in any decree they may make in the premises. They have been informed that said nails are claimed by one Robert Gilmour, a merchant in Baltimore. They cannot speak of the justness of his claim; but having themselves received the said nails from John McPherson Brien in a regular course of business, they cannot recognise the right of a third person to interfere in any way with the same, until that right shall be established in a regular and legal manner.

The amount of the proceeds of the sales of the aforesaid nails in the hands of these respondents is $. This sum, after deducting their aforesaid debt due by the said Brien, and for which the said nails are *first* liable, they submit to be disposed of by this honorable court as they shall see fit. These respondents having fully answered the complainant's bill, as far as it is material so to do, and denying all fraud and unlawful combination, pray hence to be dismissed, with costs.

WM. FOWLE & SONS.

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before the subscriber, a justice of the peace for the said county, William Fowle, of the firm of William Fowle & Sons, and made oath in due form of law, that of the matters and things stated in their foregoing answer, such as are stated of their own knowledge, are true, and all others he believes to be true.

Given under my hand this 29th day of October, 1843.

R. JOHNSTON.

A.

ANTIETAM, *Feb'y* 21, 1843.

Messrs. WM. FOWLE & SONS:

Gentlemen: Your account of sales, &c., have been examined and *find* correct, and charges for your commission, &c., made in my books accordingly.

The water I learn will be put into the canal in a day or two, when I shall embrace the first opportunity to forward you the nails you have ordered.

Yours, most respectfully,

JNO. McP. BRIEN.

Order for thesale of the nails in Fowle & Sons' hands.

And at a court continued and held for the district and county aforesaid the 28th day of May, 1844, came the parties aforesaid by their solicitors, and it is ordered and decreed by the court, with the consent of counsel in the above named causes, that William Fowle & Sons, after giving ten days notice of the time and place of sale, proceed to sell for cash the five hundred kegs of nails in the proceedings in said suit mentioned, and now in their possession; and after deducting the costs and expenses of sale, deposit the remainder of the proceeds of said nails in one of the banks in the town of Alexandria, subject to the future order and decree of the court in said causes; and that the said William Fowle & Sons make due report of their proceedings in said sale.

Leave to file cross bill.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 3d day of December, 1843, came the parties by their solicitors, and on the motion of Robert Gilmor, by Francis L. Smith, esq., his solicitor, leave is given him to file a cross bill, to be heard upon the trial of the attachment of Daniel L. Grove against John McP. Brien and others; which bill was filed accordingly. (For the same see page , of this record.)

Demurrer to cross bill.

And the defendants, Daniel L. Grove and Wm. Fowle & Sons, in said cross bill, appeared by their solicitors, and filed the following demurrer to said bill.

The defendants, Daniel L. Grove and Wm. Fowle & Sons, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true, in such manner and form as the same are therein set forth, demur to the said bill; and for causes of demurrer show—

1st. That the said complainant hath not by his said bill shown, that he is in any manner entitled to exhibit the said bill as a cross bill against these defendants; and that the same doth not contain sufficient matter whereon this court can ground any decree against these demurrants in favor of the said complainant.

2d. And for further cause of demurrer these defendants shew, that the said cross bill of the said defendant was not filed until the 34th day of the October term, 1843, of this court, and after the filing of the answers in the original cause of Grove against Brien and others, and publication had therein. Wherefore, and for divers other good and sufficient causes of demurrer in the said complainants' cross bill appearing, these defendants do demur to the same, and to all the matters and things therein contained; and they pray judgment of this honorable court, whether they shall be compelled to make any further or other answer to the said cross bill, and to be hence dismissed with their costs.

DAVIS & LEE,
For Defendants.

Leave to R. Gilmor to file a cross bill.—Leave to make R. Gilmor a defendant.

And at a court continued and held for the district and county aforesaid, the 3d day of June, 1844, came the parties aforesaid by their solicitors, and it appearing to the court that the order made at the last term of this court authorizing Robert Gilmour to file a cross bill in this cause was improvidently granted, the said Robert Gilmour not being a party defendant to the original bill in this cause, the demurrer thereto for that cause is sustained, and the said Gilmour is hereby granted leave to withdraw said cross bill; and it now here this day appearing to the satisfaction of the court that Robert Gilmour is materially interested in the matter in controversy in this cause, it is hereby ordered and decreed that he be made a party defendant therein, and that he have leave to file a cross bill against the parties in the said original bill. And it is further ordered and decreed, that the said Gilmour be allowed a commission to take the deposition of John McP. Brien, one of the defendants in this cause, and of any other witnesses that he may think proper, which shall be read on the trial of the original bill.

And thereupon the said Daniel L. Grove filed his amended bill, making the said Robert Gilmour a defendant; and the said Gilmour by his solicitor [appeared] and filed his answer to said Grove's bill, and also filed a cross bill; and the said John McP. Brien by his solicitor appeared and filed his answer; to which answer of said Brien the complainant Grove replies generally.

Amended bill.

The amended bill of said Grove is as follows—

To the honorable the judges of the circuit court of the District of Columbia for Alexandria county:

The complainant, Daniel L. Grove, amends his bill heretofore filed in his suit against William Fowle & Sons, and another, by making Robert Gilmour a defendant to the said bill, agreeably to the directions of this court.

C. H. LEE, *for Complainant.*

Answer of Robert Gilmor.

The answer of Robert Gilmour, of the city of Baltimore, in the State of Maryland, to a bill of complaint exhibited against himself and others by Daniel L. Grove, in the United States circuit court for the county of Alexandria, in the District of Columbia. This respondent, saving and reserving to himself all benefit of exception to any errors and imperfections in said bill contained, for answer thereto, or to so much thereof as he is advised is material for him to answer, says: That on the 14th day of March, 1843, John McP. Brien, of Washington county, in the State of Maryland, one of the defendants in this cause, was indebted to respondent in the sum of $4,405 40, on a certain draft for that amount

accepted, and on the 4th day of said month of March, paid by respondent at the instance and request, and for the sole use and accommodation of said Brien; which said draft is herewith filed as an exhibit, and marked .

That on and before the said 14th day of March, 1843, said Brien was likewise indebted to respondent in other large sums of money, besides the amount specified in said draft. That by previous agreement between the said Brien and this respondent, and in part liquidation of said pre-existing debt, the said Brien shipped to the care of William Fowle & Sons, of Alexandria, for the use of respondent, five hundred kegs of nails, as will be seen by reference to the receipt or bill of lading of the carrier, to whom the same was delivered, which is herewith filed as an exhibit, marked (D.) This respondent states that the said Brien, by James S. Primrose, his clerk, and agent likewise, wrote to the said William Fowle & Sons, by letter dated the said 14th day of March, 1843, advising said William Fowle & Sons of the shipment of said nails; which letter is also filed as an exhibit, marked (.) This respondent is informed and believes, that the said nails came to the possession and control of said William Fowle & Sons, on the 20th day of March, 1843, on which said day the subpœna in this cause was served on the said William Fowle & Sons; and they have since retained the said nails to answer the decree in this cause.

This respondent claims to be the actual *bona fide* owner of said nails sold and shipped to him on the said 14th day of March, 1843, in compliance with a previous agreement, as aforesaid, and the proceeds to be applied in part liquidation of the said existing indebtedness from the said Brien to this respondent. He is advised that the shipping and delivery of said nails to the common carrier, and the taking a receipt or bill of lading therefor, in consideration of said pre-existing debt, actually, and to all intents and purposes, vested the legal title to said nails in this respondent, and that the same were not on the said 20th day of March, 1843, or at any time prior thereto, liable to the said complainant's attachment. This respondent further states that the said nails were shipped on the said 14th day of March, 1843, from Anti-Eatam iron works in the State of Maryland, and beyond the jurisdiction of this hon. court; and as he is informed and believes the said nails were not brought within the District of Columbia until the 20th of March, 1843, this respondent prays that said complainant's bill of complaint may be dismissed with costs, and that the nails be decreed to be the property of respondent, and that he may be dismissed the court with his reasonable costs in this behalf expended.

ROBERT GILMOR.

STATE OF MARYLAND, *city of Baltimore, sct:*

I, Henry Snyder, mayor of the city of Baltimore, in the State of Maryland, do hereby certify, that Robert Gilmor, whose name is signed to the foregoing answer, personally appeared before me in said city, and made oath in due form of law, that the facts as therein set forth, so far

as they depend on his own knowledge, are true; and so far as they are derived from the information of others, he believes to be true.

Given under my hand and official seal this 21st day of September, [L. S.] in the year of our Lord 1843.

HENRY SNYDER,
Mayor of the city of Baltimore.

Cross bill.

To the honorable the judges of the United States circuit court of the District of Columbia, sitting in chancery, in the county of Alexandria, humbly complaining, sheweth unto your honors, your orator, Robert Gilmour, of the city of Baltimore, in the State of Maryland, who states and charges that a bill has been filed on the equity side of your honorable court by one Daniel L. Grove against John McP. Brien and William Fowle, William H. Fowle, and George D. Fowle, under the firm name of William Fowle & Sons; in which said bill, among other things, the said complainant charges that the said Brien is indebted to him in the sum of one thousand and eighty-nine dollars and eighty cents, and that the said William Fowle & Sons had at the time of filing said bill funds and effects in their possession belonging to the said Brien sufficient to pay the amount of the said indebtedness; and said complainant prays in his said bill that said funds and effects may be attached and rendered liable by decree of your honorable court to the payment of the aforesaid debt. For a more full and accurate statement of the scope and object of said bill, your orator would beg leave to refer to the proceedings in said suit, and to the papers and exhibits therein filed. Your orator further charges, that on the 14th day of March, 1843, John McP. Brien, of Washington county, in the State of Maryland, one of the defendants in the original bill referred to, was indebted to your orator in the sum of four thousand four hundred and five dollars and forty cents, on a certain draft for that amount accepted, and on the 4th of said month of March paid by your orator at the instance and request of the said Brien, and which sum is still due and unpaid by the Brien to your orator. The said draft is herewith filed as an exhibit, marked (C), and prayed to be received as part thereof. That on and before the said 14th day of March, 1843, the said Brien was likewise indebted to your orator in other large sums of money besides the amount specified in said draft. That by previous agreement between the said Brien and your orator, and in part liquidation of said pre-existing debt, the said Brien shipped to the care of William Fowle & Sons, of Alexandria, for the use of your orator, five hundred kegs of nails, as will be seen by reference to the receipt or bill of lading of the carrier to whom the same was delivered on the day of the date of said receipt, which is herewith filed as an exhibit, marked (D). Your orator further charges, that the said Brien, by James S. Primrose, his clerk, and duly authorized agent, likewise wrote to the said William Fowle & Sons, by letter dated the said 14th day of March, 1843, advising said William Fowle & Sons of the shipment of the said nails, and that the same were for the use and benefit of your

orator; according to which said receipt and letter of advice the said nails were delivered to the said William Fowle & Sons for the use and benefit of your orator. Your orator has been informed and believes, and believing charges, that the said nails came to the hands of the said William Fowle & Sons, at Alexandria, in the District of Columbia, on the 20th day of March, 1843, and have since been retained by him to answer the decree in said suit. And your orator further charges, that the said William Fowle & Sons have no funds or effects in their hands belonging to the said Brien, and subject to the attachment of the said Daniel L. Grove. Your orator avers that he is the actual bona fide owner of the said five hundred kegs of nails sold and shipped to him on the said 14th day of March, 1843, in compliance with a previous agreement as aforesaid, and the proceeds to be applied in part liquidation of the said pre-existing indebtedness from the said Brien to your orator. He is advised, and so charges, that the shipping and delivery of said nails to the common carrier, and the taking a receipt or a bill of lading therefor, in consideration of said pre-existing debt, actually, and to all intents and purposes, vested the legal title to said nails in your orator, and that the same were not on the said 20th day of March, 1843, or at any time prior or subsequent thereto, subject to the attachment of the said Grove, as set forth in his said original bill of complaint.

Your orator further states, that the said nails were shipped on the 14th day of March, 1843, from Anti-Eatam iron works, in the State of Maryland, and beyond the jurisdiction of this honorable court, and as he is informed and believes the said nails were not brought within the District of Columbia until the said 20th day of March, 1843.

Now, may it please your honors, as your orator is without remedy in a court of common law, and only relievable in a court of equity, where the said nails are now the subject of litigation, your orator prays that this may be received as a cross bill to the said original bill filed by the said Daniel L. Grove as aforesaid, and that the said Daniel L. Grove, John McP. Brien, and William Fowle, and William H. Fowle, and George D. Fowle be made defendants hereto, and answer on their corporal oaths the several allegations in this cross bill as specially as if said allegations were repeated by special interrogations; and that the said William Fowle & Sons answer and say, whether the five hundred kegs of nails were not shipped and consigned to them by the said John McP. Brien by letter dated the said 14th day of March, 1843, for the use and benefit of your orator, and that they file said letter of advice and consignment with their answer to this cross bill. And your orator prays that the proceeds arising from the sale of the aforesaid nails in the hands of the said William Fowle & Sons be paid over to your orator. Your orator prays that such other and further decree may be had in the premises as may be consistent with equity and good conscience. May it please your honors to grant your orator the United States most gracious writ of subpœna in chancery, to the said defendants directed, commanding, &c., &c.

ROBERT GILMOUR.

STATE OF MARYLAND, *city of Baltimore.*

I, James O. Law, mayor of the city of Baltimore, in the State of Maryland, do hereby certify, that Robert Gilmor, the complainant in the foregoing cross bill, personally appeared before me in said city, and made oath in due form of law, that the facts as therein set forth, so far as they depend on his own knowledge, are true; and so far as they are derived from the information of others he believes to be true.

Given under my hand and official seal this 28th day of October, 1843.

JAMES O. LAW, *Mayor.*

Exhibit D.

There is no exhibit filed marked D, but a paper marked A, being a receipt, dated 14th March, 1843, for five hundred kegs of nails, and signed by Geo. H. Sharpless for Isaac Sharpless, will be found copied after the deposition of John McP. Brien, on page 92 of this record.

C. F. LEE, *Clk.*

The draft referred to in the above bill will be found on page 96 of this record.

It is agreed, that this bill may be filed by the defendant, Gilmor, reserving the benefit of all legal exceptions.

C. H. LEE,
H. W. DAVIS.

Answer of John McP. Brien.

The answer of John McP. Brien to the original bill of Daniel L. Grove, and the cross bill of Robert Gilmor, exhibited against this defendant and others, in the United States circuit court, for the District of Columbia, sitting in chancery, at Alexandria.

This defendant, saving and reserving to himself all benefit of exception to the many errors and imperfections in the said bill contained, for answer thereto, or to so much thereof as he is advised is material for him to answer, saith, that he neither admits nor denies the indebtedness of the complainant as charged in said bill, but calls for their proof of each and every item thereof; and further answering this defendant says, that on the 14th day of March, 1843, he shipped from the Anti-eatam iron works, in Washington county and State of Maryland, five hundred kegs of nails to the care of William Fowle & Sons, at Alexandria, in the District of Columbia; that the said nails were shipped for the use of Robert Gilmor, of Baltimore, the complainant in the said cross bill, in compliance with a previous agreement and understanding between the defendant and said Gilmor, and in consideration of the part payment of a pre-existing debt, which is still due and unpaid, from this defendant to said Gilmor. This defendant avers that the shipment of the nails for the use of the said Gilmor was based on fair and bona fide transactions, and he expressly denies all charges of fraud or combination with the said Gilmor to accomplish any improper or unjust ends.

He further states, that by letter dated the 14th day of March, 1843, he informed Messrs. William Fowle & Sons that the said nails (a particular description of which is contained in said letter,) was forwarded for the use of the said Robert Gilmor, of Baltimore; and he also forwarded to them the receipt or bill of lading of the common carrier, to whom the said nails were delivered, which expressed that the same were shipped for the use of the said Robert Gilmor. This defendant most expressly and positively denies that the said nails were shipped for the use of the said William Fowle & Sons, or in consideration of any orders or agreement with them whatsoever. The said shipment, as above stated, was sold for the use and benefit of the said Robert Gilmor, and intended and agreed to be applied in part payment of a debt due and pre-existing from this defendant to him, as is charged in the said cross bill. This defendant further says, that the nails above alluded to, he is informed and believes, are now the subject of controversy in this suit; and having now answered, he prays to be hence dismissed the court, with his reasonable costs in this behalf expended.

JNO. McP. BRIEN.

STATE OF MARYLAND,

Washington county, to wit:

John McP. Brien personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, in the State aforesaid, and made oath in due form of law, that the facts as set forth in the above answer, so far as they depend on his own knowledge, are true, and so far as they depend on the information of others he believes to be true.

Given under my hand this fifth day of March, 1844.

JOHN CUNNING, *J. P.*

Daniel L. Grove's answer to cross bill.

And at the rules held in the clerk's office of the said court for the month of October, 1844, came the defendant, Daniel L. Grove, in the foregoing cross bill, and filed his answer to said bill, which answer is as follows:

The separate answer of Daniel L. Grove to the cross bill of complaint exhibited against him and others by Robert Gilmor, in the United States circuit court of the District of Columbia, for Alexandria county. This respondent, reserving to himself the benefit of all exceptions to the many errors and imperfections of the said bill, for answer thereto, or to so much thereof as he is advised it is material for him to answer, says: he admits the levy of the attachment referred to by complainant on a certain quantity of nails in the hands of William Fowle & Sons, of Alexandria, D. C., as the property of one John McP. Brien, for the purpose of securing a debt due by said John McP. Brien to this respondent. He does not admit the indebtedness of said Brien to said Gilmor, either in the amount and manner alleged in the said cross bill, or in any other amount and manner whatever. Respondent has learned that the complainant, Gilmor, is in the possession of

the Anti-etam iron works, in Washington county, Md.; of the Catockton iron works, in Frederick county, Md.; and of the valuable property called the Ore Bank, in Jefferson county, Virginia; all formerly the property of the said John McP. Brien; and *if* he was responsible for said Brien, it is most probable that he has been fully indemnified out of Mr. Brien's property, without resort to the nails attached by this respondent. This respondent has been informed, and verily believes and charges, that the said Brien for the express purpose, and no other, of protecting his property from the efforts of his creditors, has frequently contrived to make consignments of it under feigned names; and he has no doubt that such was the object and intention of said Brien in the present instance; if, indeed, any such assignment has been made as is pretended; he does not believe, and therefore cannot admit, that there was any actual bona fide transfer of the property in the nails now in dispute, from the said Brien to the complainant Gilmor. This respondent therefore requires that both the indebtedness of the said Brien, and the actual assignment of the said nails in good faith made, and in a legal manner, to the complainant, shall be substantiated by strict and rigid proof. If the paper filed by complainant, marked C, and purporting to be a draft on said Gilmor by said Brien, is relied on as the evidence of such indebtedness, this respondent says, that were the genuiness of said paper admitted, which is in no wise done, it is no evidence of a debt due from the said Brien to the complainant, and he therefore demands full proof, not only of the alleged acceptance of the draft by the complainant, and of the actual payment of the same by him, but of the true dates of both the said acceptance and the payment under it. If the paper purporting to be a receipt given by one Sharpless to the said Brien, and filed by the complainant, is relied on as the evidence of a legal transfer of the title to the said nails now in dispute, this respondent, without at all admitting the genuineness of the said receipt, but demanding the necessary evidence thereof, says, that even if the said receipt be a true and genuine one, he denies its sufficiency to transfer the property in the said nails to the complainant Gilmor.

As to the letter of advice, or any other letter written to the firm of William Fowle & Sons by the said Brien, or by any one for him, this respondent knows nothing whatever. He does not therefore admit that any such letter was ever written, and requires the complainant to prove that fact, if it be a fact. This respondent having fully answered the material allegations of the complainant's cross bill, and denying all fraud and unlawful combination, prays hence to be dismissed, with his costs in this behalf sustained.

DANIEL L. GROVE.

STATE OF VIRGINIA,
County of Jefferson, to wit:

Daniel L. Grove personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, and made oath in due form of law, that the matters and things in the annexed answer con-

tained, where stated to be of his own knowledge, are true, and where stated to be of the knowledge and information of others he believes to be true.

Given under my hand this 3d day of October, 1844.

CHARLES HARPER, *J. P.*

To which answer the complainant in the cross bill replies generally.

And at the rules held in the clerk's office of the said court, for the month of November, 1844, came the defendants, William Fowle & Sons, by their solicitor, Henry W. Davis, esq., and filed their answer to the complainant Gilmor's cross bill, to which answer the said complainant replies generally.

Answer of William Fowle & Sons to cross bill.

The separate answer of Wm. Fowle, Wm. H. Fowle, and George D. Fowle, trading under the firm of William Fowle & Sons, to the cross bill of complaint filed against them and one Daniel L. Grove by Robert Gilmor. This respondent, reserving the benefit of exception to the many errors and imperfections in the said bill contained, for answer to so much of it as it is material for them to answer, says: they know nothing of the controversy now going on between the complainant and their co-defendant Grove, and have no wish to become a party thereto. They admit that they received a consignment of about 500 kegs of nails from John McPherson Brien, but as has been heretofore stated by these respondents in their answer to the bill filed by the said Grove, attaching these nails as the property of the said Brien, this consignment was made to them in pursuance of their written request; and as the evidence of this, they refer to the letter of the said Brien, dated Feb. 21, 1843, marked A. and filed with their answer to the original bill of the said Grove; which letter they pray may be received as a part of this answer.

These respondents stated in their answer to the original bill of the said Grove, and they now repeat, that they have claims against the said Brien for prior commissions, and for advances made to him on his agreement to continue his consignments to them as heretofore. They did therefore receive these nails as the property of the said Brien; and if there was any actual transfer of the property in them to the said Gilmer, at the time they were received by these respondents, they were utterly ignorant of it.

These respondents distinctly disclaim all intention to identify their interests in the subject of this controversy with those of either party, except that they insist that the nails consigned to them by the said Brien are liable as his property to their claim against that property as the creditors of the said Brien. Whatever decree may be made by this honorable court in the premises, they pray that these interests may be protected, and their claim stated above regarded; and that the controversy, as to the property in the said nails between the complainant and their co-defendant, may be so adjusted and settled between themselves as to pre-

clude the possibility of these respondents being held liable in obeying the decretal orders of the court.

In answer to the requirement of the complainant's cross bill respecting a letter said to have been written by the said Brien to these respondents, and dated the 14th day of March, 1843, advising them that the said nails were for the use of the complainant, these respondents say they did receive by mail, on the 21st day of March, 1844, the letter marked No. 1, from Georgetown, in the District of Columbia, where it appears to have been mailed on the 20th of March, 1844, purporting to have been written by one Jas. S. Primrose for John McP. Brien; but they cannot admit either that the said letter was written when or where it purports to have been written, or that it was actually written by the said Primrose, or that he had any authority to write such a letter, or that he was an agent of John McP. Brien, of all which facts they insist on full proof. They aver that the language of said letter, according to its acceptation among commercial men, by no means necessarily imports that the property so shipped belonged at the time to Robert Gilmor, or that it had been assigned or transferred to him, or that he was entitled to it as against either these respondents or John McP. Brien, but that it simply imports a consignment to these respondents of the property at the time of the consignment belonging to Brien, and a simple designation of the person to whom the said Brien desired these respondents to remit the proceeds instead of Brien; but such property still continued at the risk of Brien, and the proceeds thereof continued at his disposal, till these respondents by some act had recognised their appropriation to Gilmore, and Gilmore had signified his acceptance thereof. And this construction is much favored by the fact that these respondents had lately sent orders to Brien for a corresponding amount of nails, and Brien by his letter marked A, and annexed to the answer of these respondents to the original bill of Grove, had promised to comply with said order. These respondents are further advised that the decree of this court sustaining the demurrer of the defendants to the cross bill formerly filed by said Gilmore, rendered at May term, 1844, is a bar both to this cross bill and to all claim on his part to an interest in said nails, and necessitates a dismission of the present cross bill, for which they accordingly pray. They further add that they knew nothing relative to the claims of said complainant on the said nails, or that they were claimed as his property at all until after they had been attached by the said Daniel L. Grove.

These respondents, having fully answered the material allegations of the said bill, and denying all fraud and unlawful combination, pray hence to be dismissed with their reasonable costs, &c.

WM. FOWLE & SONS.

ALEXANDRIA COUNTY, *Sc.*

This day the above named William Fowle, one of the firm of William Fowle & Sons, personally appeared before me, a justice of the peace for the county aforesaid, in my said county, and made oath in due

tained, where stated to be of his own knowledge, are true, and where stated to be of the knowledge and information of others he believes to be true.

Given under my hand this 3d day of October, 1844.

CHARLES HARPER, *J. P.*

To which answer the complainant in the cross bill replies generally.

And at the rules held in the clerk's office of the said court, for the month of November, 1844, came the defendants, William Fowle & Sons, by their solicitor, Henry W. Davis, esq., and filed their answer to the complainant Gilmor's cross bill, to which answer the said complainant replies generally.

Answer of William Fowle & Sons to cross bill.

The separate answer of Wm. Fowle, Wm. H. Fowle, and George D. Fowle, trading under the firm of William Fowle & Sons, to the cross bill of complaint filed against them and one Daniel L. Grove by Robert Gilmor. This respondent, reserving the benefit of exception to the many errors and imperfections in the said bill contained, for answer to so much of it as it is material for them to answer, says: they know nothing of the controversy now going on between the complainant and their co-defendant Grove, and have no wish to become a party thereto. They admit that they received a consignment of about 500 kegs of nails from John McPherson Brien, but as has been heretofore stated by these respondents in their answer to the bill filed by the said Grove, attaching these nails as the property of the said Brien, this consignment was made to them in pursuance of their written request; and as the evidence of this, they refer to the letter of the said Brien, dated Feb. 21, 1843, marked A, and filed with their answer to the original bill of the said Grove; which letter they pray may be received as a part of this answer.

These respondents stated in their answer to the original bill of the said Grove, and they now repeat, that they have claims against the said Brien for prior commissions, and for advances made to him on his agreement to continue his consignments to them as heretofore. They did therefore receive these nails as the property of the said Brien; and if there was any actual transfer of the property in them to the said Gilmer, at the time they were received by these respondents, they were utterly ignorant of it.

These respondents distinctly disclaim all intention to identify their interests in the subject of this controversy with those of either party, except that they insist that the nails consigned to them by the said Brien are liable as his property to their claim against that property as the creditors of the said Brien. Whatever decree may be made by this honorable court in the premises, they pray that these interests may be protected, and their claim stated above regarded; and that the controversy, as to the property in the said nails between the complainant and their co-defendant, may be so adjusted and settled between themselves as to pre-

clude the possibility of these respondents being held liable in obeying the decretal orders of the court.

In answer to the requirement of the complainant's cross bill respecting a letter said to have been written by the said Brien to these respondents, and dated the 14th day of March, 1843, advising them that the said nails were for the use of the complainant, these respondents say they did receive by mail, on the 21st day of March, 1844, the letter marked No. 1, from Georgetown, in the District of Columbia, where it appears to have been mailed on the 20th of March, 1844, purporting to have been written by one Jas. S. Primrose for John McP. Brien; but they cannot admit either that the said letter was written when or where it purports to have been written, or that it was actually written by the said Primrose, or that he had any authority to write such a letter, or that he was an agent of John McP. Brien, of all which facts they insist on full proof. They aver that the language of said letter, according to its acceptation among commercial men, by no means necessarily imports that the property so shipped belonged at the time to Robert Gilmor, or that it had been assigned or transferred to him, or that he was entitled to it as against either these respondents or John McP. Brien, but that it simply imports a consignment to these respondents of the property at the time of the consignment belonging to Brien, and a simple designation of the person to whom the said Brien desired these respondents to remit the proceeds instead of Brien; but such property still continued at the risk of Brien, and the proceeds thereof continued at his disposal, till these respondents by some act had recognised their appropriation to Gilmore, and Gilmore had signified his acceptance thereof. And this construction is much favored by the fact that these respondents had lately sent orders to Brien for a corresponding amount of nails, and Brien by his letter marked A, and annexed to the answer of these respondents to the original bill of Grove, had promised to comply with said order. These respondents are further advised that the decree of this court sustaining the demurrer of the defendants to the cross bill formerly filed by said Gilmore, rendered at May term, 1844, is a bar both to this cross bill and to all claim on his part to an interest in said nails, and necessitates a dismission of the present cross bill, for which they accordingly pray. They further add that they knew nothing relative to the claims of said complainant on the said nails, or that they were claimed as his property at all until after they had been attached by the said Daniel L. Grove.

These respondents, having fully answered the material allegations of the said bill, and denying all fraud and unlawful combination, pray hence to be dismissed with their reasonable costs, &c.

WM. FOWLE & SONS.

ALEXANDRIA COUNTY, *Sc.*

This day the above named William Fowle, one of the firm of William Fowle & Sons, personally appeared before me, a justice of the peace for the county aforesaid, in my said county, and made oath in due

form of law, that of the matters and things in the foregoing answer contained, such as are stated as of his own knowledge, are true, and such as are stated as of the knowledge of others he believes to be true.

Given under my hand this 7th day of October, 1844.

R. JOHNSTON.

The letters referred to in the foregoing answer will be found on page 10 for letter A, and page 32 for the letter marked No. 1.

Cause set for hearing, &c.

And at the rules, held in the clerk's office of the said court, for the month of September, 1845, (until which time this cause was regularly continued,) came the parties aforesaid by their solicitors, and this cause (on the original as well as on the cross bill) is set for hearing and decree as to all the defendants who have answered, on the *the* bills, answers, replications, depositions, and exhibits.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 18th day of October, 1845, came the parties aforesaid by their attornies, and on their motion it is ordered that general commissions be awarded to either party to take depositions, and cause continued.

Final decree.

And now here, at this day, to wit, at a court continued and held for the District and county aforesaid, the 31st day of October, 1846, came the parties aforesaid by their solicitors, and these causes being set for hearing, and coming on to be heard this 31st day of October, 1846, upon the original, amended, and cross bills, demurrer, answers, general replication, depositions, exceptions, agreements of counsel, interlocutory decrees and orders, and other papers, and it appearing to the court that all the parties defendant to said original, amended, and cross bills had duly answered the same, and the arguments of counsel being heard, the court doth order, adjudge, and decree, that the amount of sales by the defendants, William Fowle & Sons, of the nails in controversy, made under an order in these causes of May term, 1844, not having been excepted to, be and the same is hereby confirmed. And the court proceeding first to decide upon the original bill filed by the complainant, Daniel L. Grove, doth adjudge, order, and decree, that the resident defendants, William Fowle & Sons, had not, at the filing of the said original bill, or at any time since, in their hands any property, effects, or money belonging to the said non-resident defendant, Jno. McP. Brien; and do further adjudge, order, and decree, that said original bill be dismissed, and that the said Daniel L. Grove do pay to the defendants thereto their costs in that behalf expended.

And the court proceeding now to consider and decide upon the cross bill, filed by the said Robert Gilmor in this cause, doth adjudge, order, and decree, that the said Robert Gilmor recover of the said John McP. Brien the sum of four thousand four hundred and five dollars and forty cents, the amount of the draft in the said cross bill mentioned, with in-

terest thereon from the 4th day of March, 1843, till paid; to be credited, however, by the sum of one thousand eight hundred and twelve dollars and fifty cents, as of the 14th day of March, 1843; the said sum of $1812 50 being the gross amount of the sales of the said five hundred kegs of nails, as shewn by the account of sales of the said William Fowle & Sons above mentioned; and the court doth further order and decree, that the said William Fowle & Sons, out of the said one thousand eight hundred and twelve dollars and fifty cents, the proceeds of the sales of said nails in their hands, retain the sum of four hundred and thirteen dollars and fifty-four cents, in discharge and payment of the freight on the shipment of said nails, for storage, insurance, commission on sales, and the other items of charge against the said nails set forth in their said account of sales; and the court doth further adjudge, order, and decree, that the said William Fowle & Sons are not entitled to any lien on the said nails, or their proceeds, for the sum of $334 60 claimed by them to be due as a general balance of account on previous transactions between them and the said John McP. Brien. The court doth further adjudge, order, and decree that William Fowle, William H. Fowle, and George D. Fowle, composing the firm of William Fowle & Sons, pay over to the said Robert Gilmor the sum of one thousand three hundred and ninety-eight dollars and ninety-six cents, being the balance of the sales of the said nails in their hands, after deducting the said sum of $413 54 in manner aforesaid. And the court further adjudge, order, and decree that the said Robert Gilmor recover of the defendants to said cross bill his cost against them in that behalf expended.

From which decree the complainant, Grove, in the original bill, and a defendant in the cross bill, prays an appeal to the Supreme Court of the United States, which is granted, upon his giving bond and security in the sum of $2500, to be approved by the court or one of the judges thereof.

Letter of March 14th, 1843. *Brien to Fowle & Sons.*

Exhibit referred to, *No.* 1, in the answer of William Fowle & Sons to the cross bill of Robert Gilmor, a letter from John McP. Brien to said Fowle & Sons.

To Messrs Wm. Fowle & Sons:

Gent: We have this day shipped on board of Capt. Sharpless' boat, and consigned to you, for the use of Robert Gilmor, esq., Baltimore, 500 kegs nails, viz: 27 3*d*, 34 4*d*, 68 6*d*, 99 8*d*, 107 10*d*, 58 12*d*, 22 20*d*, and 17 30*d* nails; 22 2*d*, 7 8*d*, and 15 10*d* brads; 10 8*d* and 12 10*d* fencing, which we hope will arrive in good order. You will please pay Capt. Sharpless his freight, and oblige—

Yours, respectfully,

JNO. McP. BRIEN,

Pr. JAS. S. PRIMROSE.

March 14, 1843.

Postmarked, Georgetown, D. C., March 20.

form of law, that of the matters and things in the foregoing answer contained, such as are stated as of his own knowledge, are true, and such as are stated as of the knowledge of others he believes to be true.

Given under my hand this 7th day of October, 1844.

R. JOHNSTON.

The letters referred to in the foregoing answer will be found on page 10 for letter A, and page 32 for the letter marked No. 1.

Cause set for hearing, &c.

And at the rules, held in the clerk's office of the said court, for the month of September, 1845, (until which time this cause was regularly continued,) came the parties aforesaid by their solicitors, and this cause (on the original as well as on the cross bill) is set for hearing and decree as to all the defendants who have answered, on the *the* bills, answers, replications, depositions, and exhibits.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 18th day of October, 1845, came the parties aforesaid by their attornies, and on their motion it is ordered that general commissions be awarded to either party to take depositions, and cause continued.

Final decree.

And now here, at this day, to wit, at a court continued and held for the District and county aforesaid, the 31st day of October, 1846, came the parties aforesaid by their solicitors, and these causes being set for hearing, and coming on to be heard this 31st day of October, 1846, upon the original, amended, and cross bills, demurrer, answers, general replication, depositions, exceptions, agreements of counsel, interlocutory decrees and orders, and other papers, and it appearing to the court that all the parties defendant to said original, amended, and cross bills had duly answered the same, and the arguments of counsel being heard, the court doth order, adjudge, and decree, that the amount of sales by the defendants, William Fowle & Sons, of the nails in controversy, made under an order in these causes of May term, 1844, not having been excepted to, be and the same is hereby confirmed. And the court proceeding first to decide upon the original bill filed by the complainant, Daniel L. Grove, doth adjudge, order, and decree, that the resident defendants, William Fowle & Sons, had not, at the filing of the said original bill, or at any time since, in their hands any property, effects, or money belonging to the said non-resident defendant, Jno. McP. Brien; and do further adjudge, order, and decree, that said original bill be dismissed, and that the said Daniel L. Grove do pay to the defendants thereto their costs in that behalf expended.

And the court proceeding now to consider and decide upon the cross bill, filed by the said Robert Gilmor in this cause, doth adjudge, order, and decree, that the said Robert Gilmor recover of the said John McP. Brien the sum of four thousand four hundred and five dollars and forty cents, the amount of the draft in the said cross bill mentioned, with in-

terest thereon from the 4th day of March, 1843, till paid; to be credited, however, by the sum of one thousand eight hundred and twelve dollars and fifty cents, as of the 14th day of March, 1843; the said sum of $1812 50 being the gross amount of the sales of the said five hundred kegs of nails, as shewn by the account of sales of the said William Fowle & Sons above mentioned; and the court doth further order and decree, that the said William Fowle & Sons, out of the said one thousand eight hundred and twelve dollars and fifty cents, the proceeds of the sales of said nails in their hands, retain the sum of four hundred and thirteen dollars and fifty-four cents, in discharge and payment of the freight on the shipment of said nails, for storage, insurance, commission on sales, and the other items of charge against the said nails set forth in their said account of sales; and the court doth further adjudge, order, and decree, that the said William Fowle & Sons are not entitled to any lien on the said nails, or their proceeds, for the sum of $334 60 claimed by them to be due as a general balance of account on previous transactions between them and the said John McP. Brien. The court doth further adjudge, order, and decree that William Fowle, William H. Fowle, and George D. Fowle, composing the firm of William Fowle & Sons, pay over to the said Robert Gilmor the sum of one thousand three hundred and ninety-eight dollars and ninety-six cents, being the balance of the sales of the said nails in their hands, after deducting the said sum of $413 54 in manner aforesaid. And the court further adjudge, order, and decree that the said Robert Gilmor recover of the defendants to said cross bill his cost against them in that behalf expended.

From which decree the complainant, Grove, in the original bill, and a defendant in the cross bill, prays an appeal to the Supreme Court of the United States, which is granted, upon his giving bond and security in the sum of $2500, to be approved by the court or one of the judges thereof.

Letter of March 14th, 1843. *Brien to Fowle & Sons.*

Exhibit referred to, *No.* 1, in the answer of William Fowle & Sons to the cross bill of Robert Gilmor, a letter from John McP. Brien to said Fowle & Sons.

To Messrs Wm. Fowle & Sons:

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Yours, respectfully,

JNO. McP. BRIEN,
Pr. JAS. S. PRIMROSE.

March 14, 1843.

Postmarked, Georgetown, D. C., March 20.

Depositions taken on behalf of the complainant Daniel L. Grove.

Depositions.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to any two justices of the peace in and for the city of Baltimore, Maryland.

GENTLEMEN: Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining William Eichelberger, Henry S. Sanderson, Charles I. Lewis and others, in behalf of Daniel L. Grove, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between the said Daniel L. Grove, as complainant, and John McP. Brien and others, defendants; and also on the hearing of the cross bill filed by Robert Gilmor against said Grove and others; we therefore desire you, that, at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ. Witness William Cranch, esq., chief judge of our said court, this 1st day of January, in the year of our Lord 1846.

CASSIUS F. LEE, *C. C.*

TO JOHN MCP. BRIEN & ROBERT GILMOR:

Take notice, that on the 3d day of March, 1846, between nine o'clock in the morning, and four in the afternoon of that day, at the office of Samuel Manning, in the city of Baltimore, in the State of Maryland, I shall proceed to take the depositions of William Eichelberger, of Henry S. Sanderson, Charles S. Lewis, and others, to be read as evidence in my favor in a certain suit pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which I am complainant, and you and others defendants; and also on the hearing of the cross bill filed in said court against me and others by said Robert Gilmore. Given under my hand this 19th day of February, 1846.

DANIEL L. GROVE.

STATE OF MARYLAND, *Washington county, to wit:*

Be it remembered, that upon this nineteenth day of February, in the year eighteen hundred and forty-six, before me, the subscriber, one of the justices of the peace in and for the said county, personally appeared Philip Rodrick, and made oath on the Holy Evangely of Almighty God, that, on the nineteenth day of February instant, he served a true copy of the above notice upon the above named John McP. Brien.

Sworn before— ELIAS O'NEAL, *J. P.*

WASHINGTON COUNTY, *to wit:*

I hereby certify, that Elias O'Neal, gentleman, before whom the within affidavit was made, and who hath thereunto subscribed his name, was at the time of so doing one of the justices of the peace of the State of Maryland, in and for the county aforesaid, duly commissioned and sworn.

In testimony whereof, I hereunto subscribe my name, and affix the [L. S.] seal of Washington county court, this 23d day of February, A. D. 1846.

ISAAC NESBITT, *Clerk.*

MARYLAND, *Frederick county, sct:*

I, Robert N. Martin, chief judge of the fifth judicial district of the State of Maryland, composed of the counties of Frederick, Washington, and Allegany, do certify, that the foregoing attestation by Isaac Nesbitt, clerk of Washington county court, is in due form, and by the proper officer.

Given under my hand and seal this 2d day of March, in the year of our Lord one thousand eight hundred and forty-six.

ROBERT N. MARTIN. [SEAL.]

JOHN McP. BRIAN, ROBERT GILMORE:

Take notice, that on the 3d day of March, 1846, between nine o'clock in the morning and four in the afternoon of that day, at the office of Samuel Manning, in the city of Baltimore, State of Maryland, I shall proceed to take the depositions of William Eichelberger, of 1., Henry S. Sanderson, Charles S. Lewis, and others, to be read as evidence in my favor in a certain suit pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which I am complainant, and you and others defendants; and also on the hearing of the cross bill filed in said court against me and others by said Robert Gilmore.

Given from under my hand this 19th day of February, 1846.

DANIEL L. GROVE.

STATE OF MARYLAND, *city of Baltimore, sct:*

On this 2d day of March, 1846, before me, the subscriber, a justice of the peace of the said State in and for the said city, personally appeared A. J. George, and made oath on the holy evangely of Almighty God, that he served a true copy of the above notice upon the said Robert Gilmor, therein named, on the 21st day of February, 1846.

WALTON GRAY.

STATE OF MARYLAND, *Baltimore county, sct:*

I hereby certify, that Walton Gray, gentleman, before whom the within affidavit was made, and who has thereto signed his name, was at the time of so doing a justice of the peace of the State of Maryland, and in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto subscribe my name, and affix the seal of Baltimore county court, on this 3d day of March, [L. S.] 1846.

A. W. BRADFORD,
Clerk of Baltimore county court.

STATE OF MARYLAND, *sct:*

I, Stevenson Archer, chief judge of the sixth judicial district of the State of Maryland, and of Baltimore county court within said district, do certify, that the foregoing attestation by A. W. Bradford, clerk of Baltimore county court, is in due form, and made by the proper officer.

Given under my hand and seal this third day of March, A. D. 1846.

STEVENSON ARCHER. [SEAL.]

Deposition of Wm. Eichelberger.

The depositions of William Eichelberger, of I., Henry S. Sanderson, and Charles S. Lewis, taken before the subscribers, justices of the peace of the State of Maryland, in and for the city of Baltimore, in said city, on the third day of March, in the year of our Lord eighteen hundred and forty-six, between the hours of nine o'clock in the morning, and four o'clock in the afternoon of that day, at the office of Samuel Manning, in pursuance of the annexed commission and notice, and to be read in evidence on the part of Daniel L. Grove, in a certain suit pending on the chancery side of the circuit court of the district of Columbia, in which said Daniel L. Grove is complainant, and John McP. Brien and others are defendants; and also on the hearing of the cross bill filed in the said court by Robert Gilmor, in which said Gilmor is complainant, and Daniel L. Grove and others are defendants. William Eichelberger, of I., being first duly sworn, deposeth and saith: "I, as a notary public, presented the annexed bill of exchange, marked (exhibit A,) to Charles S. Lewis, agent, for payment, on the third day of May, 1842, and received for answer 'no funds.' I also, on the same day, directed notices of the non-payment of said bill of exchange to John McP. Brien and Daniel L. Grove, at Sharpsburg, Washington county, Maryland, and put them in the post office in Baltimore on the same day. I also, as a notary public, presented another certain bill of exchange, herewith annexed, and marked (exhibit B,) to Charles S. Lewis, agent, for payment, on the 17th day of May, 1842, and received for answer 'no funds.' I also, on the same day, directed notices of the non-payment of the said bill to John McP. Brien and Daniel L. Grove, at Sharpsburg, Washington county, Maryland, and put them in the post office in Baltimore on the same evening."

WILLIAM EICHELBERGER, of I.

Deposition of H. S. Sanderson.

Also came Henry S. Sanderson, who being first duly sworn, deposeth and saith: "I, as a notary public, presented the annexed bill of exchange, herewith filed, and marked (exhibit C,) to Charles S. Lewis, agent, for payment, on the 2d day of April, 1842, and received for an-

swer 'no funds for it.' I also, on the same day, directed notices of the non-payment of said bill to John McP. Brien and Daniel L. Grove, at Sharpsburg, Washington county, Maryland, and put them in the post office in the city of Baltimore on the same evening. The paper hereto annexed, and marked (exhibit D,) is the form of the notice sent to said Brien and Grove." H. S. SANDERSON.

Deposition of Charles S. Lewis.

Also came Charles S. Lewis, who being duly sworn, deposeth and saith: "I accepted the five bills of exchange, herewith annexed, and marked (exhibit A,) (exhibit B,) (exhibit C,) (exhibit D,) and (exhibit E,) as agent for the Antietam Iron Works. I was appointed the agent of those works in 1838 or 1839 by John McPherson Brien and Brother. The Antietam Iron Works have never been an incorporated company. In 1842 the Antietam Iron Works were conducted by John McP. Brien on his own account. The bills above referred to were accepted by me as his agent, and were not paid because there were no funds of the drawer on hand. None of the said bills have ever been paid by me. I did not consider myself as personally responsible for these acceptances, but merely as agent for Mr. Brien. Sharpsburg was then the nearest post office to the residence of John McP. Brien. The bill herewith annexed, and marked (exhibit G,) is in the handwriting of John McP. Brien." CHARLES S. LEWIS.

We, Walton Gray and Francis Forster, do hereby certify, that the aforegoing depositions of William Eichelberger, of I., Henry S. Sanderson, and Charles S. Lewis, were duly taken before us at the time and place, and in the manner and for the purpose mentioned in the caption hereof, and in pursuance of the notices and commission hereto annexed, said witnesses having been first duly sworn as hereinbefore stated; and we do further certify, that we were, at the time of so doing, acting justices of the peace of the State of Maryland, in and for the city of Baltimore. In testimony whereof, we have hereunto set our hands and seals the 3d day of March, 1846.

WALTON GRAY, *J. P.*
FRS. FORSTER, *J. P.*

Costs of executing this commission, $5 33.
Paid by plaintiff.

(Exhibit A.)

$150. ANTIETAM WORKS, *March 1st*, 1842.

Sixty days after date pay to the order of Daniel Grove one hundred and fifty dollars, value received, and place the same to account of—

Yours, respectfully,
JOHN McP. BRIEN.

To CHAS. S. LEWIS, ESQ., *agent, Baltimore.*

DANL. L. GROVE,
O. C. TIFFANY & CO.
CHAS. S. LEWIS,
Agent of the Anti-Etam Iron Works.

This is the paper referred to in the depositions of William Eichelberger, of I., and Charles S. Lewis, as the bill marked (exhibit A.)

WALTON GRAY.
FRS. FORSTER.

UNITED STATES OF AMERICA,
State of Maryland, to wit:

On this day, the third of May, in the year of our Lord eighteen hundred and forty-two, at the request of the cashier of the Union Bank of Maryland, bearer of the original bill of exchange, whereof a true copy is on the other side written, I, William Eichelberger, of I., notary public, by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, presented the said bill of exchange at the place of business of Charles S. Lewis, the acceptor thereof, and demanded payment therefor, and received for answer "no funds."

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the acceptor, drawer, and endorsers of the said bill of exchange, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered and to be suffered, for want of payment of the said bill of exchange.

This done and protested, at the city of Baltimore aforesaid, and on the same evening I addressed written notices, to the drawer and endorsers of said bill of exchange, informing them that it had not been paid, and that they would be held responsible for the payment thereof.

Notices for Jno. McP. Brien and Daniel L. Grove addressed to them Sharpsburgh, Maryland, and put in the Baltimore post office. Notice for O. C. Tiffany & Co. delivered to them.

In testimony whereof, I have hereunto set my hand, and affixed my seal notarial, the day and year aforesaid.

[L. S.] WILLIAM EICHELBERGER, of I.
Notary public.

Prot. $1 75.

$150. ANTIEATAM WORKS, *March 1st*, 1842.

Sixty days after date, pay to the order of Dan'l Grove one hundred and fifty dollars, value received, and place the same to account of—

Y'rs, respectfully,

JNO. McP. BRIEN.

To CHAS. S. LEWIS, ESQ., *Agent, Baltimore.*

Endorsed—

DAN'L L. GROVE,
O. C. TIFFANY & CO.
CHARLES S. LEWIS,
Agent of the Anti-Eatam Iron Works.

I admit the within draft was duly protested.

FRANCIS L. SMITH,
Sol. for def'ts, Brien and Gilmore.

DAN'L L. GROVE, ESQ.

BALTIMORE, *May 3d*, 1842.

DAN'L L. GROVE, ESQ.:

Please to take notice, that Jno. McP. Brien's bill of exchange, dated Anti Eatam Works, March 1, 1842, at 60 days after date, for $150, on and accepted by Chas. S. Lewis, agent, due, and by you endorsed, is delivered to me by the cashier of the Union Bank of Maryland for protest, and the same, not being paid, is protested, and will be returned to the cashier of the Union Bank of Maryland, and that you are held liable for the payment thereof. Yours, respectfully,

WILLIAM EICHELBERGER, of I.,
Notary public.

(Exhibit B.)

$150. ANTIEATAM WORKS, *March 15th*, 1842.

Sixty days after date, pay to the order of Dan'l Grove one hundred and fifty dollars, value rec'd, and place the same to account of—

Y'rs, respectfully,

JNO. McP. BRIEN.

To CHAS. S. LEWIS, ESQ., *Agent, Baltimore.*

DAN'L L. GROVE,
O. C. TIFFANY & CO.
CHAS. S. LEWIS,
Agent of the Anti-Eatam Iron Works.

This is the paper referred to in the depositions of William Eichelberger, of I., and Charles S. Lewis, as the bill marked (exhibit B.)

WALTON GRAY,
FR'S FORSTER.

UNITED STATES OF AMERICA,
State of Maryland, to wit:

On this day, the seventeenth of May, in the year of our Lord eighteen hundred and forty-two, at the request of the cashier of the Union Bank of Maryland, bearer of the original bill of exchange, whereof a true copy is on the other side written, I, William Eichelberger, of I., notary public, by letters patent, under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, presented the said bill of exchange at the place of business of Charles S. Lewis, agent, the acceptor thereof, and demanded payment therefor, and received for answer "no funds."

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the acceptor, drawer, and endorsers of the said bill of exchange, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered and to be suffered, for want of payment of the said bill of exchange.

Thus done and protested, at the city of Baltimore aforesaid, and on the same evening I addressed written notice to the drawer and endor-

This is the paper referred to in the depositions of William Eichelberger, of I., and Charles S. Lewis, as the bill marked (exhibit A.)

WALTON GRAY.
FRS. FORSTER.

UNITED STATES OF AMERICA,
State of Maryland, to wit:

On this day, the third of May, in the year of our Lord eighteen hundred and forty-two, at the request of the cashier of the Union Bank of Maryland, bearer of the original bill of exchange, whereof a true copy is on the other side written, I, William Eichelberger, of I., notary public, by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, presented the said bill of exchange at the place of business of Charles S. Lewis, the acceptor thereof, and demanded payment therefor, and received for answer "no funds."

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the acceptor, drawer, and endorsers of the said bill of exchange, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered and to be suffered, for want of payment of the said bill of exchange.

This done and protested, at the city of Baltimore aforesaid, and on the same evening I addressed written notices, to the drawer and endorsers of said bill of exchange, informing them that it had not been paid, and that they would be held responsible for the payment thereof.

Notices for Jno. McP. Brien and Daniel L. Grove addressed to them Sharpsburgh, Maryland, and put in the Baltimore post office. Notice for O. C. Tiffany & Co. delivered to them.

In testimony whereof, I have hereunto set my hand, and affixed my seal notarial, the day and year aforesaid.

[L. S.] WILLIAM EICHELBERGER, of I.
Notary public.

Prot. $1 75.

$150. ANTIEATAM WORKS, *March 1st*, 1842.

Sixty days after date, pay to the order of Dan'l Grove one hundred and fifty dollars, value received, and place the same to account of—

Y'rs, respectfully,

JNO. McP. BRIEN.

To CHAS. S. LEWIS, ESQ., *Agent, Baltimore.*

Endorsed—

DAN'L L. GROVE,
O. C. TIFFANY & CO.
CHARLES S. LEWIS,
Agent of the Anti-Eatam Iron Works.

I admit the within draft was duly protested.

FRANCIS L. SMITH,
Sol. for def'ts, Brien and Gilmore.

DAN'L L. GROVE, ESQ.

BALTIMORE, *May 3d*, 1842.

DAN'L L. GROVE, ESQ.:

Please to take notice, that Jno. McP. Brien's bill of exchange, dated Anti Eatam Works, March 1, 1842, at 60 days after date, for $150, on and accepted by Chas. S. Lewis, agent, due, and by you endorsed, is delivered to me by the cashier of the Union Bank of Maryland for protest, and the same, not being paid, is protested, and will be returned to the cashier of the Union Bank of Maryland, and that you are held liable for the payment thereof. Yours, respectfully,

WILLIAM EICHELBERGER, of I.,
Notary public.

(Exhibit B.)

$150. ANTIEATAM WORKS, *March 15th*, 1842.

Sixty days after date, pay to the order of Dan'l Grove one hundred and fifty dollars, value rec'd, and place the same to account of—

Y'rs, respectfully,

JNO. McP. BRIEN.

To CHAS. S. LEWIS, ESQ., *Agent, Baltimore.*

DAN'L L. GROVE,
O. C. TIFFANY & CO.
CHAS. S. LEWIS,
Agent of the Anti-Eatam Iron Works.

This is the paper referred to in the depositions of William Eichelberger, of I., and Charles S. Lewis, as the bill marked (exhibit B.)

WALTON GRAY,
FR'S FORSTER.

UNITED STATES OF AMERICA,
State of Maryland, to wit:

On this day, the seventeenth of May, in the year of our Lord eighteen hundred and forty-two, at the request of the cashier of the Union Bank of Maryland, bearer of the original bill of exchange, whereof a true copy is on the other side written, I, William Eichelberger, of I., notary public, by letters patent, under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, presented the said bill of exchange at the place of business of Charles S. Lewis, agent, the acceptor thereof, and demanded payment therefor, and received for answer "no funds."

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the acceptor, drawer, and endorsers of the said bill of exchange, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered and to be suffered, for want of payment of the said bill of exchange.

Thus done and protested, at the city of Baltimore aforesaid, and on the same evening I addressed written notice to the drawer and endor-

sers of said bill of exchange, informing them that it had not been paid, and that they would be held responsible for the payment thereof.

Notices for Jno. McP. Brien and Dan'l L. Grove, addressed to them Sharpsburg, Maryland, and put in the Baltimore post office. Notice for O. C. Tiffany & Co. delivered to them.

In testimony whereof, I have hereunto set my hand, and affixed my seal notarial, the day and year aforesaid.

[L. S.] WILLIAM EICHELBERGER, of I.,
Notary public.

Prot. $1 75.

$150. ANTIEATAM WORKS, *March* 15, 1842.

Sixty days after date, pay to the order of Dan'l Grove one hundred and fifty dollars, value rec'd, and place the same to account of—

Yours, respectfully,
JNO. McP. BRIEN.

To CH's S. LEWIS, ESQ., *Agent, Baltimore.*

Endorsed— DAN'L L. GROVE,
O. C. TIFFANY & CO.
CHAS. S. LEWIS,
Agent of the Anti-Eatam Iron Works.

I admit that the above draft was duly protested.
FRANCIS L. SMITH,
Sol. for Brien and Gilmore.
BALTIMORE, *May 17th*, 1842.

DAN'L L. GROVE, ESQ.:

Please to take notice, that John McP. Brien's bill of exchange, dated Antieatam Works, March 15, 1842, at 60 days after date, for $150, to your order, on and accepted by Charles S. Lewis, agent, due, and by you endorsed, is delivered to me by the cashier of the Union Bank of Maryland for protest, and the same, not being paid, is protested, and will be returned to the said cashier of the Union Bank of Maryland; and that you are held liable for the payment thereof.

Yours, respectfully,
WILLIAM EICHELBERGER, of I.,
Notary public.

(Exhibit C.)

$100. ANTIEATAM WORKS, *March 1st*, 1842.

Thirty days after date, pay to the order of Dan'l Grove one hundred dollars, value rec'd, and place the same to account of—

Y'rs, respectfully,
JNO. McP. BRIEN.

To CHS. S. LEWIS, ESQ., *Agent, Baltimore.*

DAN'L L. GROVE,
OTIS SPEAR,
CHAS. S. LEWIS,
Agent of the Anti-Eatam Iron Works.

This is the paper referred to in the depositions of Henry S. Sanderson and Charles S. Lewis, as the bill marked (exhibit C.)

WALTON GRAY.
FR'S FORSTER.

$100. ANTIEATAM WORKS, *March 1st*, 1842.

Thirty days after date, pay to the order of Dan'l Grove one hundred dollars, value received, and place the same to account of—

Y'rs, respectfully,

JNO. McP. BRIEN.

To CHAS. S. LEWIS, ESQ., *Agent, Baltimore.*

Endorsed—

DAN'L L. GROVE,
OTIS SPEAR.
CHAS. S. LEWIS,
Agent of the Anti-Eatam Iron Works.

UNITED STATES OF AMERICA,
State of Maryland, to wit:

On this day, the second of April, in the year of our Lord eighteen hundred and forty-two, at the request of the Merchants' Bank of Baltimore, bearer of the original bill of exchange, whereof a true copy is above written, I, Henry S. Sanderson, notary public, by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, presented the said bill of exchange at the place of business of the acceptor thereof, demanded payment of its contents, and received for answer, "no funds for it."

I admit that the above draft was duly protested.

FRANCIS L. SMITH,
Sol. for defts. Brien and Gilmore.

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer, acceptor, and endorsers of the said bill of exchange, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered and to be suffered, for want of payment of the said bill of exchange.

Thus done and protested, at the city of Baltimore aforesaid, and on the same day I addressed written notices to the drawer and endorsers of the said bill of exchange, informing them it had not been paid by the acceptor thereof, and that they severally would be held responsible for its payment; and directed those for John McP. Brien and Daniel L. Grove to them at Sharpsburg, Washington county, Maryland, deposited them in the post office in this city, and left one at the place of business of Otis Spear.

In testimony whereof, I have hereunto se. my hand, and affixed
[L. S.] my seal notarial, the day and year aforesaid.

H. S. SANDERSON,
Notary public.

Protest, $1 75.

(Exhibit D.)

BALTIMORE, *April 2d*, 1842.

SIR: Please to take notice, that John McP. Brien's bill of exchange on Charles S. Lewis, agent, Baltimore, and by him accepted, dated Antieatam Works, March 1st, 1842, payable thirty days after date to the order of Daniel Grove, for one hundred dollars, due, and by you endorsed, was this day protested for non-payment, and the holders look to you for the payment thereof.

Your humble servant,

H. S. SANDERSON, *Not. Pub.*

Mr. DANIEL L. GROVE.

This is the paper referred to in the deposition of Henry S. Sanderson as the form of notice marked (exhibit D.)

WALTON GRAY,
FRS. FORSTER.

(Exhibit E.)

$100. ANTI-EATAM WORKS, *April 6th*, 1842.

Thirty days after date pay to the order of Daniel Grove one hundred dollars, value received, and place the same to account of your obedient servant,

JOHN McP. BRIEN.

To CHARLES S. LEWIS,
Agent, Baltimore.

D. L. GROVE.
CHARLES S. LEWIS,
Agent of the Anti-Eatam Iron Works.

This is the paper referred to in the deposition of Charles S. Lewis as the bill marked (exhibit E.)

WALTON GRAY,
FRS. FORSTER.

(Exhibit F.)

$100. ANTIEATAM WORKS, *April 6th*, 1842.

Thirty-five days after date pay to the order of Daniel Grove one hundred dollars, value received, and place the same to account of your obedient servant,

JOHN McP. BRIEN.

To CHARLES S. LEWIS, esq.,
Agent, Baltimore.

DANIEL L. GROVE.
CHARLES S. LEWIS,
Agent of the Anti-Eatam Iron Works.

This is the paper referred to in the deposition of Charles S. Lewis as the bill marked (exhibit F.)

WALTON GRAY,
FRS. FORSTER.

(Exhibit G.)

$100. ANTIEATAM WORKS, *March 15th*, 1841.

Thirty days after date pay to the order of Daniel Grove one hundred dollars, value received, and place the same to account of yours, respectfully,

JOHN McP. BRIEN.

To CHARLES S. LEWIS, esq.,
Agent, Baltimore.

This is the paper referred to in the deposition of Charles S. Lewis as the bill marked (exhibit G.)

WALTON GRAY,
FRS. FORSTER.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Conrad Hogmire, Thomas Holtzman, and Robert White, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining John A. Grymes in behalf of Daniel Grove, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, wherein the said Daniel Grove is complainant, and John McP. Brien and Robert Gilmore and als. are defendants; and in the cross bill, wherein Robert Gilmore is complainant, and Daniel Grove and als. are defendants. We therefore desire you, that, at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid, before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him, and taken his deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this 25th day of April, in the year of our Lord 1846.

CASSIUS F. LEE, *C. C.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

You are hereby commanded to summon John A. Grimes to be and appear at C. Hogmire's office this day, to testify in a suit of Brien and Gilmore. Hereof fail not, and make return herein this 2d day of May, 1846, and have you then and there this precept.

Given under my hand and seal, this 2d day of May, 1846.

ROBERT WHITE, *J. P.* [L. S.]

To any constable for W. county.

DEAR SIR: I came over to attend for Mr. Gilmore the examination of a witness, the notice being for your office "between the hours of sunrise and sunset." I understand from the lad here, that the witness has gone to Alexandria, and will not return before two o'clock. I will endea-

vor to be here at that hour, but if I should not, I shall not be long in default. Please detain the witness.

Very respectfully, &c.,

J. M. CARLISLE,

C. HOGMIRE, esq. *Attorney for R. Gilmore.*

Mr. ROBERT GILMORE: Take notice, that on the 2d day of May next, 1846, at the office of Conrad Hogmire, in Georgetown, District of Columbia, between the hours of sunrise and sunset of that day, I shall take the deposition of John A. Grimes and others, to be read as evidence in the hearing of the attachment suit now pending before the circuit court of the District of Columbia, for Alexandria county, wherein I am complainant, and you and others are defendants; and in the hearing of cross bill filed by you to said original bill, wherein you are complainant; and if the same be not taken at the above time, it will be continued at such other time as the commissioners may adjourn to.

DANIEL L. GROVE.

STATE OF MARYLAND,
City of Baltimore, to wit:

On this 25th day of April, 1846, before me, the subscriber, a justice of the peace of said State, in and for said city, came Andrew J. George, and made oath on the Holy Evangely of Almighty God, that the above is a true copy of a notice this day served by him on Robert Gilmore.

SAMUEL MANNING.

STATE OF MARYLAND, *Baltimore county, sct:*

I hereby certify, that Samuel Manning, gentleman, before whom the foregoing affidavit was made, and who has thereto signed his name, was at the time of so doing one of the justices of the peace of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto subscribe my name and affix the seal of Baltimore county court, on this twenty-fifth day of
[L. S.] April, eighteen hundred and forty-six.

A. W. BRADFORD, *Clk. Balt. co. court.*

JOHN McP. BRIEN:

Take notice, that on the 3d day of May next, 1846, at the office of Conrad Hogmire, in Georgetown, D. C., between the hours of sunrise and sunset, I shall take the deposition of John A. Grimes and others, to be read as evidence in the hearing of the attachment suit now pending before the circuit court of the District of Columbia, for Alexandria county, wherein I am complainant, and you and others are defendants; and if the same be not taken at the above time, it will be continued at such other time as the commissioner may adjourn to.

Yours, very respectfully,

DANIEL L. GROVE.

WASHINGTON COUNTY,
State of Maryland, to wit:

Be it remembered, that upon this twenty-seventh day of April, in the year eighteen hundred and forty-six, before me, the subscriber, one of the justices of the peace in and for the said county, personally appeared John Hine, and made oath on the Holy Evangely of Almighty God, that on the twenty-seventh day of April instant, he served a true copy of the above notice upon the above named John McP. Brien.

Sworn before ELIAS O'NEAL, *J. P.*

WASHINGTON COUNTY, *Sct:*

I hereby certify, that Elias O'Neal, esq., before whom the foregoing affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland, in and for the county aforesaid, duly commissioned and sworn.

In testimony whereof I hereunto subscribe my name, and affix the seal of Washington county court, this twenty-eighth day of
[L. S.] April, A. D. 1846.

J. NESBITT, *Clerk.*

Deposition of John A. Grimes.

The deposition of John A. Grimes, taken in pursuance of the annexed notices and commission, to be read as evidence at the hearing of the original suit of attachment, and of the cross bill filed thereto, mentioned in the annexed notices, on behalf of Daniel L. Grove. John A. Grimes, a witness of lawful age, having been duly sworn, answers the following interrogatories as follows:

Int. 1. Are you acquainted with the parties to this suit, or any, and which of them?

Ans. I am acquainted with John McP. Brien, and also with Daniel L. Grove.

Int. 2. Were you ever at any, and what, time in the employment of John McP. Brien? If yea, state when and in what capacity.

Ans. I was in his employ in 1837 and 1838 as clerk and bookkeeper.

Int. 3. Are you not by any, and what, means acquainted with the character or handwriting of John McP. Brien, party to this suit?

Ans. I have seen him write his name.

Int. 4. Look upon the paper, writing, or letter, shown to you and marked with letter A, and purporting to be a letter written by John McP. Brien, and bearing date on the 15th day March, 1843, and addressed to Messrs. William Fowle & Sons, and say in whose character or handwriting is the said letter written, and in whose character or handwriting is the name John McP. Brien signed or subscribed thereto.

Ans. From the tenor of said letter marked A, I believe it to be the writing and signature of John McP. Brien.

Signed by JOHN A. GRIMES.

Robert Gilmor, appearing by his attorney, excepts to the admissibility of the aforegoing evidence to be read against him in the cause mentioned in the commission; or either of them, and reserving all other exceptions, both as to form and substance, declines to cross question the said witness.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

On this 2d day of May, 1846, personally appeared John A. Grimes, before us, the subscribers, three of the justices of the peace in and for said county, and commissioners in the annexed commission named, hereby certify, that on the 2nd day of May, 1846, between the hours of sunrise and sunset, at the office of Conrad Hogmire, esquire, in Georgetown, we took and reduced to writing the foregoing depositions of John A. Grimes, he being first duly sworn to tell the truth, the whole truth, and nothing but the truth, in reply to such interrogatories as might be put *by* him or either party in these causes, and that the said deposition was truly reduced to writing by us, in pursuance of and in accordance with the annexed commission and notices.

Given under our hands and seals, the day and year first before written.

CONRAD HOGMIRE, *J. P.* [SEAL.]
THOS. HOLTZMAN, *J. P.* [SEAL.]
ROBERT WHITE, *J. P.* [SEAL.]

Daniel Grove, esq.,

To C. Hogmire, Thomas Holtzman, and Robert White, Dr.

May 2d, 1846.	To taking depositions annexed - -		$6 00
	Summons to witness - - -	50	
	Witness - - - - - -	50	
		1 00	1 00
			$7 00

Rec'd pay't for the parties,
CONR'D HOGMIRE.

DISTRICT OF COLUMBIA, *to wit:*

United States of America, to Jacob Morgan and Alexander R. Boteler, or any two justices of the peace for the county of Jefferson, State of Virginia, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining Elie Conley, Isaac Sharpless, and Jeremiah Kuhn, in behalf of Daniel L. Grove, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between Daniel L. Grove and John McP. Brien and others, and in a certain other suit between Robert Gilmore and Daniel L. Grove and others. We therefore desire you, that, at such time and place as

you shall appoint, you assemble yourselves together, and the witness aforesaid before you, or any two or more of you, that you call, and cause to come, and diligently examine, on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him, and taken his deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this 7th day of June, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

To John McPherson Brien and Robert Gilmore.

Take notice, that on Monday, the 16th day of June, 1845, between the hours of ten o'clock in the morning and four in the afternoon of that day, at the hotel of Daniel Entler, in Shepherdstown, Jefferson county, Virginia, I shall proceed to take the depositions of Elie Conly, Isaac Sharpless, and others, to be used as evidence in a suit pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which I am complainant, and you and others are defendants; and also to be read in the hearing of the cross bill in which Robert Gilmore is complainant, and I and others are defendants.

Given from under my hand, this 10th day of June, 1845.

DANIEL L. GROVE.

STATE OF MARYLAND,
City of Baltimore, sct:

On this 13th June, 1845, before the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore, appeared Walter R. Jones, who made oath on the Holy Evangely of Almighty God, that he this day served a notice, of which the foregoing is a true copy, on Robert Gilmore, esq.

T. HANSON BELT.

STATE OF MARYLAND,
Baltimore county, sct:

I hereby certify, that T. Hanson Belt, gentleman, before whom the foregoing affidavit was made, and who has thereto signed his name, was at the time of so doing, and is now, a justice of the peace of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereunto subscribe my name, and affix the seal of Baltimore county court, on this 13th day of June, [L. S.] 1845.

A. W. BRADFORD, *Cl'k.*

MARYLAND, *sct:*

I, Stevenson Archer, chief judge of the sixth judicial district of the State of Maryland, and chief judge of Baltimore county court, do certify, that the foregoing attestation of Augustus W. Bradford, clerk of the said court, is in due form, and by the proper officer.

Given under my hand, at the city of Baltimore, thirteenth day of June, eighteen hundred and forty-five.

STEVENSON ARCHER.

STATE OF MARYLAND,
Washington county, to wit:

On this fourteenth day of June, 1845, before me, the subscriber, one of the justices of the peace, in and for Washington county, and State aforesaid, personally appeared Philip Rodrick, and made oath on the Holy Evangely of Almighty God, that the within notice was served upon John McP. Brien.

Sworn before ELIAS O'NEAL,
Justice of the peace for Washington county, State of Md.

WASHINGTON COUNTY, *to wit:*

I hereby certify, that Elias O'Neal, gentleman, before whom the above affidavit was made, was at the time of so doing one of the justices of the peace of the State of Maryland, in and for the county aforesaid, duly commissioned and qualified.

In testimony whereof, I hereunto subscribe my name, and affix the seal of Washington county court, this 17th day of June, A. [L. S.] D. 1845.

ISAAC NESBITT, *Cl'k.*

Mr. John McP. Brien and Robert Gilmore.

Take notice, that on Monday, the 16th day of June, 1845, between the hours of ten o'clock in the morning and four in the afternoon of that day, at the hotel of Daniel Entler, in Shepherdstown, Jefferson county, Virginia, I shall proceed to take the depositions of Elie Conley, Isaac Sharpless, and others, to be used as evidence in a suit pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which I am complainant, and you and others are defendants; and also to be read on the hearing of the cross bill, in which Robert Gilmore is complainant, and I and others are defendants.

Given from under my hand, this 10th day of June, 1845.

DANIEL L. GROVE.

Deposition of Jeremiah Kuhn.

The deposition of Jeremiah Kuhn, taken by virtue of the annexed commission and notice, before the subscribers, justices of the peace in and for the county of Jefferson, and State of Virginia, on the 16th day of June, 1845, between the hours of ten in the morning and four in the afternoon of that day, at the hotel of Daniel Entler, in the town of Shepherdstown, Jefferson county, Virginia, said deposition to be used as evidence for Daniel L. Grove, in a suit pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which said Daniel L. Grove is complainant, and Jno. McPherson Brien and others are defendants; and also on the hearing of the cross bill, in which Robert Gilmore is complainant, and said Daniel L. Grove and others are defendants.

The said Jeremiah Kuhn having been first duly cautioned and sworn, deposeth as follows:

Question 1st. Are you acquainted with Jno. McPherson Brien, and how long have you known him?

Answer. I am; have known him for the last twenty years.

Question 2d. Who was the proprietor of the Anti-Etam Iron Works in Washington county, Maryland, on the 14th March, 1843?

Answer. Jno. McPherson Brien.

Question 3d. How do you know this?

Answer. It was so generally understood; he was in possession of the works at that time, and exercised various acts of ownership over them, and paid for work done at the works; in fact I have never heard it denied.

Question 4th. Were you present at the conversation between John McPherson Brien and Hillerry F. Hebb, in the spring of 1843; if so, state the precise time and substance of the conversation as near as you can recollect.

Answer. I was present at a conversation between John McPherson Brien and Hillery F. Hebb, which I think was some time in March, 1843, at the conversation which took place in the office of John McP. Brien at the works, (Antieatam.) Mr. Hillerry F. Hebb presented him a protested draft for payment, either in money or nails. Jno. McPherson Brien stated that he had no funds, and that he could not let him have any nails at that time, inasmuch as he had to fill an order for five hundred kegs of nails, in favor of a firm in Alexandria, D. C., the name of which, if he mentioned, I do not remember now, but that he could let him have some in a few weeks; he also promised me to pay in nails a claim which I held against him; which, however, he failed to do. Although he ordered one of his agents, Mr. Davis, to furnish me with fifteen kegs of nails in my presence, which order Mr. Davis neglected to attend to, assigning as a reason that he was ordered by Mr. Brien to send all the nails to Alexandria; and I saw the wagons from the furnace going to Sharpless' warehouse loaded with nails.

Question 5th. Where was Mr. Sharpless' warehouse located?

Answer. On the C. and Ohio Canal, about $\frac{1}{4}$ mile from Jno. McP. Brien's.

Question the 6th. What was the baptismal name of Mr. Sharpless, who occupied this warehouse?

Answer. Isaac Sharpless.

And further the deponent saith not.

JEREMIAH KUHN.

Sworn to and subscribed before the subscribers, justices of the peace in and for the county of Jefferson, State of Virginia, on the day, at the time and place in the caption mentioned.

JACOB MORGAN, *J. P.*
ALEX. R. BOTELER, *J. P.*

DISTRICT OF COLUMBIA:

The United States of America, to Charles Harper and William Butler, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining John Little, Elie Conley, and William S. Elgin, witnesses, in behalf of Daniel L. Grove, in a suit depending in our circuit court of the District of Columbia for the county of Alexandria, between the said Daniel L. Grove and John McP. Brien and others, defendants. We therefore desire you that, at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them, and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ. Witness William Cranch, esquire, chief judge of our said court, this 20th day of December, in the year of our Lord 1844.

CASSIUS F. LEE, *C. C.*

John McP. Brien and Robert Gilmore.

Take notice, that on 30th day of December, 1844, at the hotel of Elie Conley, in the town of Shepherdstown, Jefferson county, Virginia, between the hours of ten o'clock in the morning and four in the afternoon of that day, I shall proceed to take the depositions of John Little, Elie Conley, William S. Elgin, and others, to be used as evidence in my favor in the suit pending on the chancery side of the circuit court of the District of Columbia for Alexandria county, in which I am plaintiff, and you and William Fowle & Sons are defendants; and in the suit pending in the same court, in which said Gilmore is plaintiff, and I and others are defendants; and if from any cause the taking of the said depositions shall not be commenced on that day, or being commenced shall not be completed, the taking of the same will be adjourned from day to day. Given from under my hand this 26th day of December, 1844.

Yours, respectfully,

DANIEL L. GROVE.

WASHINGTON COUNTY, *to wit:*

Be it remembered, that upon the 27th day of December, A. D. 1844, before me, the subscriber, one of the justices of peace of the State of Maryland, in and for the said county, personally appeared Jeremiah Kuhn, and made oath on the Holy Evangely of Almighty God, that on the 27th day of December inst., he served the within notice upon the within named John McP. Brien.

Sworn before— JOHN CUMMING, *J. P.*

WASHINGTON COUNTY, *to wit:*

I hereby certify, that John Cumming, esq., before whom the above

affidavit was made, and who has thereto subscribed his name, was at the time of so doing one of the justices of the peace of the State of Maryland in and for the county aforesaid, duly commissioned and sworn.

In testimony whereof, I hereunto subscribe my name, and affix [L. S.] the seal of Washington county court, this 28th day of December, 1844.

O. H. WILLIAMS, *Clerk*.

WASHINGTON COUNTY, *to wit:*

I, Th. Buchanan, one of the associate judges of the fifth judicial district of the State of Maryland, do hereby certify, that Otho H. Williams, esq., is clerk of Washington county court. Given under my hand this 28th day of December, 1844.

TH. BUCHANAN.

To John McP. Brien and Robert Gilmore.

Take notice, that on the 30th day of December, 1844, at the hotel of Elie Conley, in the town of Shepherdstown, Jefferson county, Virginia, between the hours of ten o'clock in the morning and four in the afternoon of that day, I shall proceed to take the depositions of John Little, Elie Conley, Elgin, and others, to be used as evidence in my favor in the suit pending on the chancery side of the circuit court of the District of Columbia for Alexandria county, in which I am plaintiff, and you and William Fowle & Sons are defendants; and in the suit pending in the same court, in which said Gilmore is plaintiff, and I and others are defendants; and if from any cause the taking of the said depositions shall not be commenced on that day, or being commenced shall not be completed, the taking of the same will be adjourned from day to day. Given from under my hand this 26th day of December, 1844.

Yours, respectfully,
DANIEL L. GROVE.

UNITED STATES OF AMERICA,
State of Maryland, city of Baltimore:

Be it remembered, and it is hereby certified, that on this twenty-eighth day of December, in the year of our Lord one thousand eight hundred and forty-four, personally appeared before me, William Eichelberger, of I., justice of the peace of the State of Maryland in and for the city of Baltimore, William Patterson, city bailiff, and made oath on the Holy Evangely of Almighty God, that he this day served a notice on Robert Gilmore, by placing the same in his hands, a notice of which the above is a true and faithful copy.

Sworn before— WILLIAM EICHELBERGER, of I.,
Justice of the peace in and for the city of Baltimore.

STATE OF MARYLAND,
Baltimore county, sct:

I hereby certify, that William Eichelberger, of I., gentleman, before

whom the within affidavit was made, and who has thereto signed his name, was, at the time of so doing, a justice of the peace of the State aforesaid, in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto set my hand, and affix the seal of Baltimore county court, this 28th day of December, 1844.

[L. S.] THOS. KELL, *Clerk.*

MARYLAND, *set:*

I, Stevenson Archer, chief judge of the sixth judicial district of the State of Maryland, and chief judge of Baltimore county court, do certify, that the foregoing attestation of Thomas Kell, clerk of the said court, is in due form, and by the proper officer.

Given under my hand, at the city of Baltimore, [the] twenty-eighth day of December, eighteen hundred and forty-four.

STEVENSON ARCHER.

Depositions of Little and Conley.

The depositions of John Little and Elie Conley, witnesses of lawful age, taken before the subscribers, justices of the peace in and for the county of Jefferson, State of Virginia, at the hotel of Elie Conley, in the town of Sheperdstown, Jefferson county, Virginia, on the 30th day of December, 1844, between the hours of ten o'clock in the morning and four o'clock in the afternoon of that day, in pursuance of the annexed commissions and notice; the said depositions to be used as evidence in favor of Daniel L. Grove, in a certain matter pending on the chancery side of the circuit court of the United States of the District of Columbia, for Alexandria county, in which said Daniel L. Grove is complainant, and John McP. Brien and others are defendants, and in a certain matter in which Robert Gilmore is complainant, and said Daniel L. Grove and others are defendants, the said witnesses, having been first duly cautioned and sworn, depose as follows:

John Little, having been first duly cautioned and sworn, in answer to the questions put, deposeth as follows:

Question 1st by complainant Grove. Were you ever employed as a clerk in the store of the complainant, Daniel L. Grove? If so, state when, and for how long a time.

Answer. I commenced business as clerk for Daniel L. Grove about the 1st November, 1841, and continued with him until December, 1843.

Question 2d by Daniel L. Grove. Examine the annexed open account, marked exhibit No. 1, and state if the goods therein charged were sold and delivered to the defendant, John McBrien, at the price therein stated.

[Answer.] I was clerk for Daniel L. Grove, and the account marked exhibit No. 1 *I* copied from his books by me, and the greater portion of the goods sold by me, and delivered at the prices therein stated.

Question 3d by Grove. State any thing further that you know relative to the dealings between Brien and said Grove.

Answer. J. McP. Brien was a large dealer, and nearly all the goods charged in the account was sold to his hands on orders from him, and he was in the habit of dealing on credit.

Question 4th by Daniel L. Grove. Are you acquainted with the handwriting of John McP. Brien?

Answer. I am.

Question 5th. Look at the six drafts, purporting to be drawn by said Brien on Charles S. Lewis, of Baltimore, in favor of said Grove, and marked with the letters A, B, C, D, E, and F, and state if they be genuine or not; also the consideration for them, if known to you.

Answer. The two drafts of March 1st, 1842, one for $100 and the other for $150; the two drafts of March 15th, 1842, one for $100 and the other for $150; and the two drafts of April 6th, 1842, for $100 each, and marked with the letters A, B, C, D, E, and F, are in the proper handwriting of said (Brien,) and were given for money loaned, and shinplasters issued by him, held by said (Grove.)

And further deponent saith not.

JNO. T. LITTLE.

Elie Conley having been first duly cautioned and sworn, deposeth as follows:

Question 1st by Grove. Please state whether you were in the employment of John McP. Brien during the year 1843; if so, state when you commenced, and when you left his employment, and in what capacity you were employed.

Answer. I was in the employment of Mr. J. McP. Brien the greater part of the year 1843, and had been with him more than two years previous. I left his employment some time in October, 1843; I was superintendent of machinery, and sometimes filled orders for nails and iron.

Question 2d by same. Do you know any thing of Mr. Brien's pecuniary circumstances during that period, and of any effort on the part of said Brien to shield his property from his creditors?

Answer. Mr. Brien was very much embarrassed during my stay with him; I saw iron, nails, &c., marked by the names of James S. Primrose, Wm. Brown, and Mr. Nickolds, persons in the employ of said Brien; and was informed by Mr. Nickolds, one of the gentlemen above named, that they were not sold, but it was necessary so to mark them, in order to prevent them from being attached by Mr. Brien's creditors, and it was the only means they could devise to raise money to defray the expenses of the works. The iron which I have alluded to was marked with the names Primrose and Brown, but did not reach its destination; it was attached by Mr. Elgin, a creditor of Mr. Brien.

(The above questions and answers are excepted to, as impertinent, suggestive, and hearsay.)

Question 4th. Do you recollect ever having seen nails hid about any part of the establishment? If so, state all that you know relative thereto.

Excepted to as suggestive.

Answer. I do. I remember having seen them hid under the new office; they were put there to keep the sheriff from executing them. I saw the nails hid in this place. Mr. Primrose, who was Mr. Brien's clerk, informed me that he had received a letter from Mr. Brien, directing him to conceal from the sheriff all the nails, iron, &c., he could.

Question 5th. In what capacity was Mr. Primrose and Mr. Nickolds employed by Brien?

Answer. Mr. Nickolds was employed as superintendent of the nail factory, and Mr. Primrose as book-keeper and financier.

Question 6. Had you access to the order books at the Anti Eatam iron works, during the winter of 1842 and 1843? If so, do you recollect ever having seen any entry relative to an order for nails from Wm. Fowle & Sons, of Alexandria, D. C., during the latter part of the years 1842 and 1843? Excepted to as suggestive.

Answer. I had access to the order books during that period, and recollect having seen some from Alexandria, D. C. Think they were from those persons, but do not recollect exactly.

Question by complainant Grove. Do you know of any other seizure of nails or iron, marked with the names of any person in Mr. Brien's employ, by any other person or persons, except that before stated as having been made by Mr. Elgin?

Answer. I know of none, except that which was attached by Mr. Elgin. And further deponent saith not.

ELIE CONLEY.

Sworn to and subscribed before the subscribers, as in the caption mentioned, this 30th day of December, 1844.

WILLIAM BUTLER, *J. P.*
CHARLES HARPER, *J. P.*

Account referred to in complainant Grove's bill and the foregoing deposition.

Mr. John McP. Brien,

To Daniel L. Grove, Dr.

1842.			
January	25	Assumed for C. N. Burns	$46 99
	25	" for John Datcher	5 07
	25	" for John Reader	1 18
March	12	Order per John Seart	5 00
	21	Skein silk per Abram	06
	24	Order per John Mullen	3 00
	26	" Edd. Jackson	1 00
	26	" Joseph Hill	1 50
	28	To 3 lbs. candle wick *a* 37, per order	1 12
April	11	1 ball candle wick 12, coffee sack 12	25
	11	Order per Geo. Green	2 00
	11	" Wm. Sparrow	5 00
	16	" John Glass	10 00
	16	" Henry Johnson	5 00
	16	" Van Beshares	1 00
	18	" John McKen	3 00
	20	" Francis Ingrim	5 00
	23	" Benj. Jackson	3 00
	26	" Henry Morrison	75
	28	" John Rulett	1 00
	28	To castor oil 75, per Van Lear	75
	29	Order per Jacob Shay	7 00
	29	" Joseph Gouff	1 00
	29	1 dozen glass per order	50
	30	Order per David Howell	6 00
May	2	" Porter	3 00
	5	" David Howell	2 00
	7	2 whitewash brushes, one 62, one 50	1 12
	7	4 empty boxes, 3 at 75, 1 at 50, 1 crate 50	3 25
	10	Order per Wm. Sparrow	2 00
		Carried forward,	$127 54
		Amount brought forward,	127 54
May	10	4 balls twine *a* 25, per order	1 00
	14	Order per Samuel Shuff	50
		Black fur hat per order	4 25
	14	Order per Joseph Hill	2 50
	16	" Samuel Shuff	1 00
	16	" Isaac Sealer	50
		5¼ yds. bombazine *a* 2 12 c.	11 26
		Trimmings for same	4 56
	19	Order per James Patten	25
	25	" Andy Longstraith	1 50
		" Joseph Ingrim	5 00
	28	"	50
		" Chas. McCarty	2 00
		" Timothy Divine	1 50
June	1	" Harlyn Pyle	6 00
	2	" John McKen	10 00
	3	" Otis Aldrich	9 53
	10	" Willson Pyle	6 00
	11	" Geo. Green	3 00
	11	" Samuel Shuff	50
	11	" Ralph Gray	1 00
	11	" Alfred Sease	1 00
	11	" Chas. McCarty	2 00

Account—Continued.

June	11	Order per Jas. Snyder - - - - - -	75
	11	" Thos. Jackson - - - - -	1 25
	11	" Jos. Hill - - - - - -	2 00
	11	" Andy Longstraith - - - - -	50
	11	" Edd. Jackson - - - - -	75
	11	" Henry Jackson - - - - -	3 00
	11	" Jno. Jackson - - - - -	2 00
	11	" Chris. Daywell - - - - -	2 00
		Carried forward, - -	$215 64
		Amount brought forward, - -	215 64
June	11	Order per Chris. Hildebrand - - - - -	2 00
	11	" John Rulet - - - - - -	1 00
	11	" Rich. Evins - - - - - -	5 00
	13	Assumed Henry Bamford - - - - -	21 10
	13	" Rob. Willson - - - - -	15
	13	" Wm. Sparrow - - - - -	12 20
	13	" for John Galbraith - - - - -	3 75
	13	" John Crawford - - - - -	38
	13	" Isaac Sealer - - - - - -	18
	13	" Rich'd Evins - - - - -	3 65
	13	" Caleb Broomell - - - - -	15 40
	13	" Arthur Gomell - - - - -	13
	13	" John Rutes - - - - - -	1 40
	13	" Ed. Jackson - - - - - -	3 75
	13	" Edd. Morrison - - - - -	14
	13	" Thos. Jackson - - - - -	28
	13	" Jas. Crutzville - - - - -	13
	13	" Henry Morrison - - - - -	56
	13	Order per David Willhelm - - - - -	2 00
	13	" Thos. Morrison - - - - -	8 00
	13	5 yds. Irish linnen *a* 75, boss 6¼ - - - -	3 81
	13	Caps 12, 1 lb. tobacco 31¼, per order - - - -	44
	13	Assumed for John Seart - - - - -	3 94
	14	Order per David Howell - - - - -	6 00
	14	" Joseph Gouff - - - - -	1 00
	14	" - - - - - - -	1 50
	14	" Robert Ainsworth - - - - -	4 00
	14	" - - - - - - -	5 00
	14	" John Seart - - - - - -	2 00
	15	" Isaac Sealer - - - - - -	3 00
	16	" John Bowers - - - - - -	1 50
		Amount carried forward, - -	$329 03
		Amount brought forward, - -	329 03
June	16	Order per John Wolf - - - - - -	4 00
	16	" Dorsey Barnes - - - - -	1 00
	16	" Samuel Shuff - - - - -	2 00
	16	" Daniel Bowers - - - - -	1 00
	16	" Henry Bramford - - - - -	8 00
	17	" Thos. Jenifer - - - - -	1 00
	17	" John Crawford - - - - -	3 00
	18	" Jos. Ingrim - - - - - -	2 00
	18	" James Grooms - - - - -	1 00
	18	22¾ lbs. loaf sugar *a* 17, order - - - -	3 87
	18	Order per James Moore - - - - -	1 00
	18	" J. Ingrim - - - - - -	1 00
	18	" Francis Ingrim - - - - -	2 00
	18	" Jno. Glass - - - - - -	3 00

Account—Continued.

June	18	Order per Samuel Jamison	3 00
	18	" Jacob Carty	4 00
	18	" Adam Barnes	1 25
	18	" Joshua Barnes	1 00
	18	" Chas. McCarty	5 00
	18	" Ben. Cookerly	1 50
	18	" Wm. Davis	2 00
	18	" Jas. Margrun	2 00
	18	" Chas. Hildebran	1 50
	18	" Wm. Sparrow	2 00
	18	" Jas. Patterson	1 00
	18	" Timothy Divine	50
	18	" Jno. Mullen	75
	18	" John Rulet	1 00
	18	" Benj. Jackson	2 00
	18	" Edd. Jackson	2 00
	18	" Josiah Jackson	1 00
		Carried forward,	$394 40
		Amount brought forward,	394 40
June	18	Order per Benj. Jackson	3 00
	18	" John Gray	1 00
	18	" Geo. Green	2 00
	18	" Jno. Reider	1 00
	20	" Stephen Gouldring	2 50
	21	" Jno. Bowers, jr.	7 00
	21	" Jas. Kurchville	3 00
	21	" Moss Jackson	1 00
	22	" David Willhelm	2 00
	22	" John Boyers	1 50
	24	" Jas. Mullen	2 00
	24	Trunk locks 31¼, ½ qr. sand paper 37	69
	24	3 qrs. letter paper *a* 25, order	75
July	21	1 dung fork per Davis	1 00
August	12	Bed cord per Davis	38
Novem'r	22	Thread per De Lanney	10
			$423 32
		Interest on $400 up to March 1, 1842	
		Interest on $100 up to March 1, 1842	
		James Tomyhill, agent	12 00
			435 32
		Nails	50 00
			385 32
1842.		Col. Miller, fill order	75
Decemb'r	22	Balance due me on settlement	$384 57
		Interest on $500 up to March 1, 1842	
		Balance due me on settlement	
	28	1½ doz. buttons *a* 25, per Mr. Israel	

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Charles Harper and John Quigley, or any two justices of the peace for Jefferson county, State of Virginia, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining Josiah Davis in behalf of Daniel L. Grove, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between Daniel L. Grove as complainant, and John McP. Brien and als. are defendants; also on the hearing of the cross bill in said court, in which said Daniel L. Grove and others are defendants, and Robert Gilmore is complainant. We therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him and taken his deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this 30th day of April, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

MR. ROBERT GILMOR:

Take notice, that on the fifteenth day of July, 1845, between the hours of ten in the morning and four in the evening of that day, at the house of Daniel Entler, in the town of Shepherdstown, county of Jefferson, State of Virginia, I shall proceed to take the depositions of Hilery F. Hebb, Josiah Davis, and others, to be used as evidence in a suit now pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which I am plaintiff, and you and others are defendants; and also to be read as evidence on the hearing of the cross bill pending in the same court, in which you are plaintiff, and I and others are defendants.

Given under my hand this the eighth day of July, 1845.

DANIEL L. GROVE.

STATE OF MARYLAND, *city of Baltimore, ss:*

On this 12th day of July, 1845, before me, the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore, personally appeared Otis Spear, and made oath on the Holy Evangely of Almighty God, that he this day, at 1 P. M., served a copy of the above notice in writing upon Robert Gilmore, at the compting room of said Gilmore in the city of Baltimore, and that said Gilmore admitted the service thereof.

OTIS SPEAR.

Subscribed and sworn to before me—

SAMUEL MANNING.

STATE OF MARYLAND, *Baltimore county, sct:*

I hereby certify, that Samuel Manning, gentleman, before whom the within affidavit was made, and who has thereto signed his name, was at the time of so doing a justice of the peace of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto set my hand, and affix the seal of [L. S.] Baltimore county court, this 12th day of July, 1845.

A. W. BRADFORD, *Cl'k.*

STATE OF MARYLAND, *Washington county, to wit:*

Be it remembered, that upon the tenth day of July, eighteen hundred and forty-five, before me, the subscriber, one of the justices of the peace in and for the said county, personally appeared John Hine, and made oath on the Holy Evangely of Almighty God, that on this tenth day of July, eighteen hundred and forty-five, he served a copy of the within notice upon the within named John McPherson Brien, defendant.

Sworn before— ELIAS O'NEAL, *J. P.*

WASHINGTON COUNTY, *sct:*

I hereby certify, that Elias O'Neal, esq., before whom the foregoing affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland, in and for the county aforesaid, duly commissioned and sworn.

In testimony whereof, I hereto subscribe my name, and affix the seal of Washington county court, this 14th day of July, A. D. [L. S.] 1845.

ISAAC NESBITT, *Cl'k.*

MR. JOHN McP. BRIEN:

Take notice, that on the 15th day of July, 1845, between the hours of 10 o'clock in the morning until 4 o'clock in the evening, at the house of Daniel Entler, in the town of Shepherdstown, county of Jefferson, State of Virginia, I shall proceed to take the depositions of Josiah Davis and others, to be used as evidence in a suit now pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which I am complainant, and you and others are defendants; and also to be read as evidence on the hearing of the cross bill pending in the same court, in which you and others are defendants, and Robert Gilmore is complainant.

Witness my hand this 9th day [of] July, 1845.

DANIEL L. GROVE.

Deposition of Josiah Davis.

The deposition of Josiah Davis taken in pursuance of the annexed notices and commission at the house of Daniel Entler, in the town of Shepherdstown, Jefferson county, Virginia, on Tuesday, the 15th day of July, 1845, between the hours of ten in the morning and four in the

afternoon of that day, before the subscribers, justices of the peace in and for the said county of Jefferson, State of Virginia; said deposition to be read as evidence in favor of Dan'l L. Grove, in a certain suit pending on the chancery side of the circuit court of the District of Columbia, for Alexandria county, in which said Dan'l L. Grove is comp't, and John McP. Brien and others are defendants; also on the hearing of the cross bill pending in the same court, in which said Grove and others are defendants, and Robert Gilmore, comp't.

The said Josiah Davis having been first duly cautioned and sworn, deposeth as follows:

Question 1st by comp't. Are you acquainted with John McP. Brien, and how long have you known him?

Answer. I am, and have known him for a number of years.

Question 2d by do. Were you ever in said Brien's employment; if so, state when and for how long a time.

Answer. I was. I commenced with about the 8th February, 1842; left about the 8th of March, 1843.

Question 3d. Had you access to the order book kept by him?

Answer. I had.

Question 4th. Do you recollect ever having seen an order for nails on Mr. Brien from any house in Alexandria, D. C.?

Answer. I do.

Question 5th. Will you state if you please the name of that house, the number of kegs of nails ordered, and the date of the order?

Answer. The name of the house was William Fowle & Sons; the number of kegs five hundred; the date I do not remember; I think it was however about the latter part of January, or the first part of February in that year; I left about the 8th of March, 1843, and saw the order a short time before I left.

Question 6th. Was the order complied with?

Answer. Not that I know of; all that I can say is, that after the order had been seen by me, I saw nails in the factory directed to William Fowle & Sons; whether they were sent or not I do not know of my own knowledge.

By defendants' counsel.

How were the nails in the factory marked or directed to Fowle & Sons?

Answer. The kegs were marked on the heads. And further deponent saith not.

JOSIAH DAVIS.

The above deposition was taken before the subscribers, justices of the peace for the county of Jefferson, State of Virginia, in presence of Daniel L. Grove and Henry Berry, esq., counsel for the defendants, on the day, at the place, and time, in the caption mentioned. In testimony of all which, we have hereto set our hands and seals, this 15th day of July, 1845, at the house of Daniel Entler, in the town and county aforesaid.

CHARLES HARPER, [SEAL.]
JOHN QUIGLEY. [SEAL.]

Deposition of Henry B. Clagett.

GROVE,
vs.
BRIEN et al.

GILMORE,
vs.
GROVE, BRIEN, et al.

Depositions of witnesses, taken before Joseph Eaches, by consent of parties, to be read in evidence at the hearing of the original suit of Grove vs. Brien, Fowle & Sons, and Gilmore, and of the cross bill filed by Gilmore against Grove, Fowle & Sons, and Brien, this 16 day of May, 1845, at the mayor's office in Alexandria.

Henry B. Clagett, a witness of lawful age, produced and sworn on behalf of the defendants Fowle & Sons, in answer to the following interrogatories says as follows:

1. Have you any, and what, connection with the firm of Fowle & Sons?

2. Whether or no there have been any, and what, dealings between the said firm and John McP. Brien, and what is the state of the accounts between the parties; and whether or no any, and what, balance is due by either of them to the other, and which?

To the 1st interrogatory the deponent answers, that he is book-keeper for the firm.

Answer to the 2nd interrogatory. There have been dealings between the parties mentioned, which consisted in the consignments of nails for sale on account of said Brien, upon which the said Fowles have advanced to the said Brien certain sums of money; the account of sales of nails has been closed, and account current made out, shewing a balance of three hundred and eighty-four dollars and sixty cents, due in cash 30th April, 1845, due by the said Brien to the said Wm. Fowle & Sons. Further this deponent saith not.

H. B. CLAGETT.

DISTRICT OF COLUMBIA,
Alexandria county, to wit:

The preceding deposition was this day taken and sworn to before me, by consent of parties.

Given under my hand.

JOS. EACHES,
Justice of the peace for the county of Alexandria, D. C.

May 16th, 1845.

Deposition of John McP. Brien.

The deposition of John McP. Brien, taken on Thursday the 17th day of April, 1845, at Jacob Irvin's tavern, in the town of Sharpsburg, in the county of Washington, and State of Maryland, between the hours of sunrise and sunset, by virtue of a commission from the circuit

court of the District of Columbia, for the county of Alexandria, to be read in evidence in behalf of Robert Gilmore, on the hearing of the original bill now pending on the chancery side of the said court, in which Daniel Grove is plaintiff, and the said Gilmore and others are defendants; and on the hearing of the cross bill pending in said court, in which said Gilmore is plaintiff, and said Grove and others are defendants. The said John McP. Brien, of lawful age, being sworn, deposeth as follows:

Question by Gilmore's counsel.

Had you any transactions with Robert Gilmore in relation to a draft on him, in the month of April, 1842? If so, state what the nature of it was.

Answer. I drew on Robert Gilmore a draft payable 11 months in favor John A. Mantz, for $4,405 $\frac{40}{100}$, which was accepted by Gilmore, and paid by him.

By same. Have you any knowledge of a shipment of nails from the Antietam Iron Works to Wm. Fowle & Sons, of Alexandria, in the month of March, 1843? If so, state all the particulars you know about the matter.

Answer. In consideration of the aforesaid draft and other large indebtedness by myself to Robert Gilmore, existing at the time and prior to the month of March, 1843, I shipped 500 kegs nails to Messrs. Wm. Fowle & Sons, of Alexandria, by Geo. F. Sharpless, for said Gilmore's use and on his account.

By same. Examine the receipt dated 14th March, 1843, marked A, now before you, and if you know, say in whose handwriting the body thereof, and the signature thereto, are.

Answer. I am well acquainted with both; the body of the receipt is in the handwriting of James S. Primrose, (then my agent,) and the signature is George F. Sharpless.

By same. In what character did George F. Sharpless give the receipt?

Answer. As the agent of Isaac Sharpless, a common carrier upon the canal, and he was acting in this capacity at the time the receipt was given.

By same. Examine the copy of a letter to William Fowle & Sons, dated 14th of March, 1843, signed in your name, and marked B, now before you, and say whether it is a true copy, in whose handwriting the original was, and by whose authority it was written and sent

Answer. The letter is a true copy of the original which is in the handwriting of James S. Primrose, then my agent, and was written by my authority and directions.

By same. Were the nails sent intended to meet order of William Fowle & Sons, of the 21st February, 1843, or on what account, and for what purpose were they sent?

Answer. They were not intended to meet that order, but were intended as the receipt shows for the use of Robert Gilmore and on his account, and were sent to Messrs. William Fowle & Sons as his consignees.

The complainant excepts to the reading of this deposition on account of the incompetency of the deponent.

Question by complainant. Who is in possession of the Anti Etam Works at this time?

Answer. Robert Gilmore, of Baltimore.

Question by same. Who is in possession of the Catoctin?

Answer. Pengin Fitzhugh.

By same. When did Mr. Gilmore take possession of the Anti-Etam Works?

Answer. On the 16th of May, 1843.

By same. Who is in possession of the property in Virginia, called the Ore Bank?

Answer. Robert Gilmore.

By same. When did he take possession?

Answer. Some time during the summer of 1843.

By same. Did you then possess the property stated in your answers to be now in the possession of Robert Gilmore?

Answer. Yes.

Question by same. When was the letter to William Fowle & Sons (a copy of which you have referred to) mailed?

Answer. I presume on the day of its date, as it is customary with me to mail my letters on the day that they are written.

Question by same. Where was it mailed?

Answer. I presume at Sharpsburg, where I usually mail my letters.

Question by same. Did you receive due notice of the protests of the drafts in favor of Daniel L. Grove, on which an attachment suit has been instituted against you in the circuit court of the District of Columbia, for Alexandria county?

Answer. I take it for granted I received regular notices of the protests.

JOHN McP. BRIEN.

A.

Carrier's receipt referred to in the above deposition of John McP. Brien.

Received, March 14, 1843, of John McP. Brien, 500 kegs of nails, to be delivered to William Fowle & Sons, Alexandria, D. C., for the use of Robert Gilmore, esq., Baltimore, in good order.

GEORGE H. SHARPLESS,
For ISAAC SHARPLESS.

Being unable to obtain two magistrates in taking the aforegoing deposition, we agree to waive the formality of having *more* than one, saving all other exceptions.

HENRY BERRY, *for Gilmore.*
RICHARD HENRY LEE, *for Grove.*

WASHINGTON COUNTY, *to wit:*

I, Elias O'Neal, a justice of the peace for the county aforesaid, in the State of Maryland, do hereby certify, that the aforegoing deposition of John McP. Brien was duly taken and sworn to before me at the time and place mentioned in the caption thereof, and that I am a justice of the peace for the county aforesaid.

Given under my hand and seal, this 17th day of April, 1845.

ELIAS O'NEAL. [SEAL.]

This deposition is excepted to by Fowle & Sons and by Grove, on account of informality, and on account of the incompetency of the deponent to testify.

H. W. DAVIS,
C. H. LEE.
For defendants.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Samuel Purviance and T. Hanson Belt, justices of the peace of the State of Maryland, in and for the city of Baltimore, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining John McP. Brien and Charles Ing, in behalf of Robert Gilmore, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between Daniel Grove and John McP. Brien and others, we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid, before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him and taken his deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness William Cranch, esq., chief judge of our said court, this 27th day of January, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

Mr. DANIEL GROVE:

SIR: Take notice, that on Wednesday, the twenty-sixth day of February, 1845, at the Exchange Hotel, in the city of Baltimore, and State of Maryland, between the hours of sunrise and sunset of said day, I shall proceed to take the deposition of Charles Ing, to be read as evidence in my behalf, in the hearing of the *original* bill now pending in the chancery side of the circuit court for the District of Columbia, sitting in the county of Alexandria, in which you are complainant, and myself and others are defendants; and on the hearing of the *cross* bill pending in said court, in which I am complainant, and yourself and others are defendants.

Yours, &c., ROBERT GILMOR.

STATE OF MARYLAND,
Washington county, to wit:

On this the 18th day of February, in the year of our Lord one thousand eight hundred and forty-five, before me, the subscriber, one of the justices of the peace in and for the county and State aforesaid, personally appeared George W. Van Lear, and made oath on the holy evangelists of Almighty God that he has left a true copy of the above notice with said Daniel Grove. Witness my hand.

WM. H. MILLER,
Justice of the peace.

To Messrs. William Fowle, William H. Fowle, and George D. Fowle, trading under the firm name of William Fowle & Sons.

GENTLEMEN: Take notice, that on Wednesday, the 26th day of February, 1845, at the Exchange Hotel, in the city of Baltimore, and State of Maryland, between sunrise and sunset of said day, I shall proceed to take the depositions of John McP. Brien and Charles Ing, to be read as evidence in my behalf in a suit now pending and undetermined on the chancery side of the United States circuit court for the District of Columbia, sitting in the county of Alexandria, in which Daniel Grove is complainant, and yourselves and others are defendants; and said evidence will also be read on the hearing of the cross bill filed in said cause, in which I am complainant, and yourselves and others are defendants. Yours, &c.,

ROBERT GILMORE,
By FRANCIS L. SMITH,
His attorney.

January 27th, 1845.

ALEXANDRIA COUNTY, *to wit:*

George Johnson personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, in the District of Columbia, and made oath in due form of law, that on this day he delivered a true copy of the within notice to William H. Fowle, one of the firm of William Fowle & Sons.

Given under my hand, this 27th day of January, 1845.

CHARLES McKNIGHT.

The draft referred to in Gilmor's cross bill.

$4,405 40. ANTIEATAM WORKS, *April 1st*, 1842.

Eleven months after date pay to the order of John A. Mantz four thousand four hundred and five and 40-100 dollars, value received, and place the same to account of

Your obedient servant,

JOHN McP. BRIEN.

To ROBERT GILMOR, esq.,
Baltimore, Md.

Accepted, ROBERT GILMOR.

Pay to the order of W. B. Tyler, esq., cashier.

JOHN A. MANTZ.

Pay to the order of T. Cross, esq., cashier.

W. B. TYLER, *Cashier*.

Received payment at bank, from R. Gilmor

Per T. CROSS, *Cr.*
BURNESTON.

A. This is the draft, or bill of exchange, referred to in the deposition of Charles Ing.

S. PURVIANCE,
T. HENSON BELT,
Commissioners, &c.

Deposition of Charles Ing.

The deposition of Charles Ing, of the city of Baltimore, in the State of Maryland, taken and reduced to writing on this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and forty-five, at the Exchange Hotel in the said city of Baltimore, between sunrise and sunset, by virtue of the annexed commission, issuing out of the circuit court of the District of Columbia for the county of Alexandria, in a suit depending in said court between Daniel Grove and John McP. Brien and others, and directed to us, Samuel Purviance and T. Hanson Belt, justices of the peace of our said State of Maryland, in and for the city of Baltimore.

The said Charles Ing being by us first duly sworn on the holy evangely of Almighty God, to declare the truth, the whole truth, and nothing but the truth, did depose and say, that he is now, and has been for several years past, a clerk in the employment of Robert Gilmor, of the city of Baltimore; that he is well acquainted with the handwriting of John McP. Brien, and that the draft or bill of exchange now shown to him, marked A, and the signature thereto, are in the proper handwriting of the said Brien; that he is also well acquainted with the handwriting of the said Robert Gilmor, and that the words "accepted, Robert Gilmor," written on the face of said draft or bill of exchange, are in said Gilmor's proper handwriting. And the said witness did further depose and say, that said draft or bill of exchange having been lodged for collection in the Commercial and Farmers' Bank in the city of Baltimore was at its maturity, to wit, on the fourth day of March, eighteen hundred and forty-three, taken up and fully paid by the said Robert Gilmor.

CHARLES ING.

Samuel Purviance, T. Hanson Belt, commissioners named in the annexed commission, and justices of the peace of the State of Maryland, in and for the city of Baltimore.

Costs for executing this commission, $5 33.
Expense of room at Exchange Hotel, 1 00.

DANIEL GROVE
vs.
JOHN McP. BRIEN & others.

An original bill, attachment in chancery.

ROBERT GILMOR
vs.
DANIEL GROVE & others.

On cross bill in the above.

We hereby waive all exceptions as to *form* in taking the depositions of Charles Ing and John McP. Brien, filed in this cause, and agree that said depositions may stand, and be regarded as if taken and certified regularly, and in all respects according to law, saving all exceptions to the competency of the said witnesses, and the matters contained in said depositions; and it is agreed that the deposition of Henry Clagett, taken before Joseph Eaches by consent of parties, may be read at the hearing of above suits, as if taken regularly under a commission.

H. W. DAVIS,
For Fowle & Sons.
FRANCIS L. SMITH,
For Brien & Gilmor.
CHARLES H. LEE,
For Daniel Grove.

Deposition of Messrs. Brent and Glenn.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Walton Gray and Samuel Manning, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining John Glenn and Robert J. Brent in behalf of Robert Gilmor, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between Daniel L. Grove and said Gilmor, in the original and cross bill, we therefore desire you, that, at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid before you, or any two or more of you, that you call and cause to come, and diligently examine on the holy evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them, and taken their deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this 6th day of March, in the year of our Lord 1846.

CASSIUS F. LEE, *C. C.*

To Mess. William Fowle, William H. Fowle, George D. Fowle, joint partners under the firm name of William Fowle & Sons, Daniel Grove, and John McP. Brien.

Take notice, that on Friday, the tenth day of April, 1846, (between

sunrise and sunset of same day,) at the office of Walton Gray, esq., (a justice of the peace,) on Mercer street, in the city of Baltimore, and State of Maryland, I shall proceed to take the depositions of John Glenn and Robert J. Brent, to be read as evidence on the hearing of the original bill, in which Daniel Grove is complainant, and myself and others are defendants; and on the cross bill in which I am plaintiff, and said Grove and others are defendants; which said original and cross bills are now pending and undetermined in the United States circuit court in the District of Columbia, for the county of Alexandria.

Yours, &c.,

ROBERT GILMOR,
By FRANCIS L. SMITH,
His attorney.

DISTRICT OF COLUMBIA,
Alexandria county, ss:

This day came before me, a justice of the peace for the county aforesaid, in said county, Edward Burchell, who made oath, in due form of law, that he left a true copy of the annexed notice this day in the hands of William H. Fowle, therein named.

Given under my hand and seal, this 14th day of March, 1846.

R. JOHNSTON. [SEAL.]

To MR. DANIEL GROVE:

SIR: You are hereby notified, that on Friday, the 10th day of April, 1846, between sunrise and sunset of said day, I shall proceed, at the office of Walton Gray, esquire, situate in Mercer street, in the city of Baltimore, and State of Maryland, to take the depositions of John Glenn and Robert J. Brent, to be read as evidence on the hearing of the original bill, in which you are complainant, and myself and others are defendants; and on the hearing of the cross bill, in which I am complainant, and yourself and others are defendants; which are now pending and undetermined in the United States circuit court of the District of Columbia, for the county of Alexandria.

ROBERT GILMOR.

WASHINGTON COUNTY, *to wit:*

Be it remembered, that upon this seventeenth day of March, in the year eighteen hundred and forty-six, before me, the subscriber, one of the justices of the peace in and for the said county, personally appeared George W. Vanlear, and made oath on the Holy Evangely of Almighty God, that on this day he served a true copy of the within notice upon the within named Daniel L. Grove.

Sworn before ELIAS O'NEAL, *J. P.*

To MR. JOHN MACPHERSON BRIEN:

SIR: You are hereby notified, that on Friday, the 10th day of April, 1846, between sunrise and sunset of said day, I shall proceed, at the office of Walton Gray, esquire, situate in Mercer street, in the city of Baltimore, and State of Maryland, to take the depositions of John Glenn

and Robert J. Brent, to be read as evidence on the hearing of the original bill, in which you are complainant, and myself and others are defendants; and on the hearing of the cross bill, in which I am complainant, and yourself and others are defendants; which are now pending and undetermined in the United States circuit court of the District of Columbia, for the county of Alexandria.

ROBERT GILMOR.

WASHINGTON COUNTY, *to wit:*

Be it remembered, that upon this seventeenth day of March, in the year eighteen hundred and forty-six, before me, the subscriber, one of the justices of the peace in and for the said county, personally appeared George W. Vanlear, and made oath on the Holy Evangely of Almighty God, that on this day he served a true copy of the within notice upon John McP. Brien.

Sworn before ELIAS O'NEAL, *J. P.*

Copy of boatman's receipt.

"Rec'd, March 14th, 1843, of Jno. McP. Brien, 500 kegs nails, to be delivered to Wm. Fowle & Sons, Alexandria, D. C., for the use of Robert Gilman, esq., Baltimore, in good order.

GEO. H. SHARPLESS,
For ISAAC SHARPLESS.

Copy of letter to Messrs. Fowle & Sons.

TO MESSRS. WM. FOWLE & SONS.

GENTLEMEN: We have this day shipped on board of Capt. Sharpless' boat, and consigned to you *for the use of Robert Gilmor, esq., Baltimore*, 500 kegs nails, viz., 27 3*d*, 34 4*d*, 68 6*d*, 99 8*d*, 107 10*d*, 58 12*d*, 22 20*d*, and 17 30*d*, nails; 24 12*d*, 7 8*d*, and 15 10*d*, brads; 10 8*d*, and 12 10*d*, fencing; which we hope will arrive in good order. You will please pay Capt. Sharpless his freight, and oblige,

Yours, respectfully, &c.,

JOHN McP. BRIEN,
Per JAS. S. PRIMROSE.

March 14th, 1843.

(Exhibit A.)

This is the paper referred to in the depositions of John Glenn and Robert J. Brent, and mentioned in the interrogatory marked *question* 3d, as (exhibit A.)

WALTON GRAY,
SAMUEL MANNING.

Deposition of John Glenn.

The depositions of John Glenn and Robert J. Brent, taken in pursuance of the annexed commission and notices, before us, the subscribers, two justices of the peace of the State of Maryland, in and for the city of Baltimore, on Friday, the tenth day of April, 1846, at the office

of Walton Gray, esq., (a justice of the peace,) between sunrise and sunset of said day, to be read in evidence on the part of the defendants in a suit depending in the circuit court of the District of Columbia, for the county of Alexandria, in [which] Daniel Grove and others are complainants, and Robert Gilmor and others are defendants; and on the cross bill, in which Robert Gilmor is complainant, and Daniel Grove and others are defendants.

The said John Glenn, being first duly sworn, deposeth and saith, in answer to the following questions:

Question 1st. Do you know the parties?

Answer. I know Mr. Brien and Mr. Gilmor.

Question 2d. Are you a practising lawyer in any, and what, courts in Maryland; if yea, how long have you practised in said courts?

Answer. I am a practising lawyer in almost all the courts of Maryland, particularly in the courts of Baltimore county, the court of chancery, and the court of appeals.

Question 3d. Look at the paper hereto annexed, and marked (exhibit A,) and say whether in your opinion, according to the settled law in Maryland, the delivery of the nails to the boatman at Anti-Etam Iron Works in Washington county in the State of Maryland, accompanied by the letter of consignment to William Fowle & Sons, of Alexandria, did or did not vest an absolute right to said nails, or the proceeds thereof, in the said Robert Gilmor?

Answer. In my opinion, the delivery of the nails vested an absolute right to said nails in Robert Gilmor.

Question 4th. Do you know of any decision or decisions in the court of appeals of Maryland, touching the question propounded to you in the last interrogatory; if yea, refer thereto, and state whether said court is or not the highest court of law and equity in said State.

Answer. I do; the case of Powell vs. Bradley, in 9th Gill and Johnson, 220; the court of appeals is the highest court of law and equity in the State of Maryland.

JOHN GLENN.

Deposition of Robert J. Brent.

The said Robert J. Brent, being first duly sworn, deposeth and saith, in answer to the above interrogatories:

To interrogatory marked question 1st he saith: I know some of the Messrs. Fowle, Daniel Grove, and John McP. Brien, slightly.

To interrogatory marked question 2d he saith: I am practising law in Maryland, particularly in Baltimore county court, Charles county, Howard district court, the court of chancery, and the court of appeals. I have resided in Maryland since the fall of 1841, but have practised in the courts of Maryland for several years before that time.

To interrogatory marked question 3d he saith: In my opinion, the delivery of the said nails to the consignee vested the right of property in Robert Gilmor, if it was a bona fide shipment, for the use of said Gilmor.

To interrogatory marked question 4th he saith: I do; the case of Powell vs. Bradlee & Co., in 9th vol. Gill and Johnson, page 276. I also refer to 2d vol. Harris and McHenry, page 453; and I further state, that the common law would be considered in my opinion applicable to the case stated, as I am not aware of any statute in Maryland on the subject; and further, to show what the common law is, I refer to 6th vol. of Sergeant & Rawle, pages 430, and 443. The court of appeals is the highest court of law and equity in the State of Maryland, as will appear by the constitution of the State of Maryland, which is the best evidence of the fact.

ROBERT J. BRENT.

STATE OF MARYLAND, *city of Baltimore, sct:*

We, Walton Gray and Samuel Manning, do hereby certify, that the aforegoing depositions of John Glenn and Robert J. Brent were duly taken before us in the city aforesaid, at the time and place mentioned in the notices annexed to the commission, and for the purposes in the caption mentioned; and we do further certify, that we were acting justices of the peace in and for the city aforesaid of said State.

In testimony whereof, we have hereunto set our hands and seals this tenth day of April, 1846.

WALTON GRAY, [SEAL.]
SAMUEL MANNING. [SEAL.]

Excepted to as improperly certified, and not taken according to law.

C. H. LEE.

Sales 500 casks nails, received from the Antieatam Iron Works, for account and risk of whom it may concern.

Account of the sale of the nails by Wm. Fowle & Sons.

1845.			
Nov. 8	R. Crupper, 100 casks, 10,000 lbs. *a* $4½ 6 months credit -	$412 50	
1846.			
Oct. 27	James Green, 400 casks, 40,000 lbs. *a* $3½ 6 months credit -	1400 00	$1812 50
	Charges.		
1843.			
Mar. 18	Paid freight on 500 kegs nails - - - - - -	75 00	
	Interest on $75 till sales are due - - - - -	17 54	
	Wharfage, $5; drayage, $3 75 - - - - -	8 75	
	Storage, *a* ¾ cents per cask per month - - - -	152 25	
	Labor, receiving, piling, and delivering - - - -	5 00	
	Cooperage - - - - - - - - - -	4 25	
	Fire insurage, 5.100 per $100 a month and policy, $1 - -	42 00	
	Commission and guarantee, 6 per cent. - - - -	108 75	413 54
	Nett proceeds average cash, February 7–10th, 1847 - -	-	$1398 96

E. E.

Alexandria, October 28th, 1846.

WM. FOWLE & SONS.

Appeal bond

Know all men by these presents, that we, Daniel Grove and Jonathan Shafer, are held and firmly bound unto John McP. Brien and Robert Gilmore in the full and just sum of two thousand five hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves and our heirs, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 3d day of November, 1846.

Whereas by a decree of the circuit court of the District of Columbia, for the county of Alexandria, made and pronounced the 31st day of October, 1846, in a suit in which Daniel Grove was complainant, and John McP. Brien and others were defendants, and on a cross bill filed by Robert Gilmore, against John McP. Brien, Daniel Grove, and others, it was ordered and adjudged, that the defendants William Fowle & Sons had not at the time of the filing of the complainant Grove's bill, or at any time since, any property, effects, or money, belonging to the said non-resident defendant, John McP. Brien, and that the said bill be dismissed, and that the said Daniel Grove do pay to the defendants their costs in that behalf expended. And the court upon the cross bill filed in said cause did order, adjudge, and decree, that the said Robert Gilmor recover of the said John McP. Brien the sum of $4405 40, the amount of the draft in the said cross bill mentioned, with interest thereon, at the rate of six per cent. per annum, from the 4th day of March, 1843, till paid; to be credited, however, by the sum of $1812 50, being the gross amount of the sales of five hundred kegs of nails, as shewn by the account of sales of the said William Fowle & Sons. And the court doth order and decree, that the said William Fowle & Sons, out of the said $1812 50, the proceeds of the sales of said nails in their hands, retain the sum of $413 54, in discharge and payment of the freight on the shipment of said nails, for storage, insurance, commission on sales, and the other items of charge against said nails set forth in their said account of sales; and the court doth further order, adjudge, and decree, that the said William Fowle & Sons are not entitled to any lien on the said nails, or their proceeds, for the sum of $384 60 claimed by them to be due as a general balance of account on previous transactions between them and the said John McP. Brien. The court doth further order, adjudge, and decree, that William Fowle, William H. Fowle, and George D. Fowle, composing the firm of William Fowle & Sons, pay over to the said Robert Gilmor the sum of $1398 96, being the balance of the sales of the said nails in their hands, after deducting the said sum of $413 54 in manner aforesaid. And the court further adjudge, order, and decree, that the said Robert Gilmor recover of the defendants to said cross bill his costs against them in that behalf expended. From which decree the complainant Grove in the original bill, and a defendant in the cross bill, prays an appeal to the Supreme Court of the United States, which is granted by the court, upon his giving bond and security in the sum of $2500, to be approved by the court or one of the judges thereof.

Now, the condition of the above obligation is such, that if the said

Daniel Grove shall prosecute his said appeal, and pay all costs and damages which may be awarded against him in case he shall fail therein, then the above obligation to be void, else to remain in full force and virtue.

DANIEL L. GROVE, [SEAL.]
JONA. SHAFER. [SEAL.]

Signed, sealed, and delivered in presence of—
Witness—R. GARRETHON.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

On this 9th day of November, 1846, before me, the subscriber, a justice of the peace in and for the said county, personally appeared Jonathan Shafer, the above named security, and made oath on the Holy Evangely of Almighty God, that he is worth, over and above all his liabilities, the sum of twenty-five hundred dollars.

JOHN D. CLARK, *J. Peace.*

Approved. 9th November, 1846.

J. S. MORSELL.

DISTRICT OF COLUMBIA, *County of Alexandria, to wit:*

I, Cassius F. Lee, clerk of the United States circuit court of the District of Columbia, for the county of Alexandria, hereby certify, that the foregoing is a true transcript of the record of the proceedings in the original bill of Daniel L. Grove against John McP. Brien and others; and on the cross bill of Robert Gilmor against Daniel L. Grove and others, with all things touching the same, as wholly and fully as they exist among the records of my office.

[L. S.] In testimony whereof, I hereto subscribe my name, and affix the seal of the said court, this 21st day of December, 1846.

CASSIUS F. LEE, *C. C.*

Filed January 5, 1847.

1039.

In the Supreme Court, United States.

DANIEL L. GROVE, appellant,
against
JOHN McP. BRIEN & others, appellees.

To be added to the record in the above suit.

To the honorable the United States' circuit court, of the county of Alexandria, in the District of Columbia.

Your petitioner, Robert Gilmour, of the city of Baltimore, respectfully showeth, that one Daniel L. Grove has filed a bill on the equity side of your honorable court, against John McP. Brien and William Fowle & Sons, in which, among other things, the said complainant charges that the said Brien is indebted to him in the sum of one thousand and eighty-nine dollars and eighty cents; and further charges that the said William Fowle & Sons had, at the time of filing said bill, funds and effects in their possession sufficient to pay the amount of the said indebtedness; and said complainant prays in his said bill that said funds and effects may be attached and subjected by decree of your honors' court to the payment of the aforesaid debt. For a more full and accurate statement of the scope and object of said bill, and the proceedings in said suit, your petitioner would refer to the papers and exhibits filed therein. Your petitioner would respectfully state, that the subpœna in said suit was served on said William Fowle & Sons (as appears by the marshal's return thereon) on the 20th day of March, 1843. That on or about that day the said William Fowle & Sons received on consignment, for the use of your petitioner, five hundred kegs of nails, which were shipped by the said John McP. Brien on the 14th day of March, 1843. That the said nails were shipped for your petitioner's use, in compliance with a previous agreement between himself and said Brien, and in part liquidation of a large debt, greatly exceeding the value of said nails, which was and is still due from the said Brien to your petitioner. The particulars of which said debt will be more fully stated in your petitioner's answer to said bill, should your honors permit him to become a party defendant thereto.

Your petitioner claims to be the actual bona fide owner of said nails, now held by said William Fowle & Sons, to answer your honors' decree in the aforesaid suit; and he prays your honors that he may be permitted to become a party thereto, to enable him to show his right and title thereto.

Your petitioner therefore respectfully prays that your honors will permit him to be made a party defendant thereto; and he will ever pray, &c.

ROBERT GILMOUR.